

Exhibit 21

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13 San Francisco Bay Conservation and Development

14 Commission

15 21 Aug 13 BCBD Recording

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1 INTERN 1: My name is [UNINTEL] and I'm
2 one of the legal interns. I go to law school at
3 Washington in St. Louis and I'm a native of
4 Israel, or I am Israel.

5 INTERN 2: My name is Noelle [SIMPSON?].
6 I'm the other legal intern. I go to Vermont Law
7 School, and I'm also from Israel.

8 ADRIENNE KLEIN: I'm Adrienne Klein. I
9 manage our enforcement program at BCDC.

10 JOHN BOWERS: John Bowers, staff counsel
11 at BCDC.

12 BRAD MCCREA: And I'm Brad McCrea, the
13 director of the regulatory program.

14 ERIK BUEHMANN: I'm Erik Buehmann,
15 permit analyst.

16 MARK SANDERS: Mark Sanders, Westpoint
17 Harbor.

18 DOUG AIKINS: Doug Aikins with Hopkins &
19 Carley in San Jose, general land use counsel, I'd
20 say.

21 MAUREEN SANDERS: Maureen O'Conner
22 Sanders. Enough said.

23 DOUG FURMAN: Doug Furman, Westpoint
24 Harbor.

25 BRAD MCCREA: Well, thanks for coming

1 in. I don't know or remember exactly who called
2 the meeting, but we thought we'd open up with
3 some thoughts, and then we can turn it over to
4 you. We didn't prepare an agenda, but we wanted
5 to, at some point, respond to the letter that was
6 written back and talk about processing. And all
7 of that, we'd like to do as quickly as possible.
8 It's 2:30, I'd rather not go until 5:00 because
9 Erik has three or four other projects that he has
10 deadlines on where he designed the Review Board
11 meeting and whatnot.

12 Do you folks have something particular
13 you want to hit before I launch into this?

14 DOUG AIKINS: We gave you our amended
15 permit and the staff report claiming how it came
16 to say what it says. We're here to find out what
17 you agree with of that and what you disagree with
18 of that.

19 BRAD MCCREA: Okay, then our agenda is
20 the same.

21 DOUG AIKINS: Okay.

22 BRAD MCCREA: So as we all know, there's
23 been lots of negotiations. And so, the letter
24 back was a bit of a surprise that we have more
25 requests to be made because we thought we were--

1 we thought we had a deal. We thought we had a
2 permit that could be executed. And so now, we
3 have a permit that, Mark, you're having--you
4 don't--you feel like you can't sign unless more
5 changes are made. We said in our letter that if
6 you didn't sign the permit, we're going to start
7 enforcement proceedings.

8 Well, we're here to tell you today that
9 we are going to entertain what you have to say.
10 We have some things that we feel that we can
11 change and some things that we can't change. But
12 we have a new sort of deal, and that is we're
13 willing to share with you what we feel we can
14 change, and then you can take it or leave it.

15 If you don't want to sign the permit,
16 that's your choice, but then you'll be bound by
17 the last amendment, Amendment #4, which you've
18 already executed and signed. You already are
19 responsible for the obligations of Amendment #4,
20 and I don't think there's any disagreement about
21 that and you're in violation with that permit.

22 So if you don't sign Amendment #5, then
23 we'll just live with Amendment #4 and we'll take
24 that through the process.

25 So it's--I don't mean to make this a

1 bigger deal than it is, but today is a very
2 important day to come to some conclusions,
3 because we've done this at least--well, we've
4 done this several times before and we keep--the
5 ball keeps moving. We think we have a deal and
6 then the ball moves. We make some agreements and
7 the ball moves. And your latest letter is just
8 one more time, we feel, of moving the ball.

9 MARK SANDERS: Or the goalpost.

10 BRAD MCCREA: Or the goalpost, so yeah,
11 I guess so. Thank you. Removing the goalpost is a
12 better analogy.

13 BRAD MCCREA: So I don't know what the
14 timeframe is for us amending--you know, we'll
15 amend the permit for the things that we feel we
16 can amend one last time.

17 Erik, like I said, has a number of
18 things he's working on right now, but maybe we
19 could get that done in the next couple of weeks
20 and get it to you, and then we would expect it to
21 be executed within the 10 days required by the--I
22 guess it's by regs--anyway, within 10 days.

23 So that's the intro. What we can do is
24 talk about the --

25 ADRIENNE KLEIN: Brad.

1 DOUG AIKINS: Yes.
 2 ADRIENNE KLEIN: But we are not willing
 3 to change the dates in the existing Amendment #5.
 4 DOUG AIKINS: The dates, what was that?
 5 ADRIENNE KLEIN: The due dates for the
 6 public access installation would stay as they
 7 are, based on my understanding.
 8 BRAD MCCREA: Absolutely.
 9 ADRIENNE KLEIN: So the additional
 10 negotiations I'm going to turn into additional
 11 kind of public access.
 12 BRAD MCCREA: That's exactly right. So
 13 we can do this a couple of ways. We can go point
 14 by point, or we can just--Erik can summarize or
 15 can go into a little bit more detail about what
 16 we cannot live with that you've suggested.
 17 But here are some of the highlights
 18 in broad terms. And, again, the staff here will
 19 put a finer point on this, but there's the issue
 20 about the salt point jurisdiction; the guest
 21 berths in your proposal and how to solve that
 22 problem; the connection--the delay for connecting
 23 Pacific Shores to your property, the public
 24 access; the phasing around this--phase 2 and
 25 phase 3. And when that comes online, I think you

1 wanted to--the way it's written now, it's prior
 2 use of any structure. Issues like narrowing the
 3 path. And then this language that you're
 4 proposing around CEQA and planting.
 5 So those are some of the things that we
 6 have we took issue with. And we can go into great
 7 deal about why we're treating you the same way
 8 we've treated applicants for the last 48 years of
 9 BCDC history, and why we feel very firmly that if
 10 you want to go back to Amendment #4, you're
 11 welcome to do that.
 12 We've talked about you want your day in
 13 the sun with the Commission and we're happy to do
 14 that. It would probably be an enforcement
 15 proceeding, but we're happy to go that route. So
 16 any questions?
 17 ADRIENNE KLEIN: We'd rather not go that
 18 route. We'd rather not go that route.
 19 BRAD MCCREA: Okay. It's not worth it
 20 and no one wants to spend the time doing these.
 21 This is, we are spending the time, so much time
 22 in all of these meetings because what we want to
 23 do is get you to a level of comfort with the
 24 words that you'll sign the permit, Mark.
 25 We just want you to--this is your

1 permit and we have been, in many cases, just
 2 wordsmithing, but we can't keep doing this.
 3 DOUG AIKINS: We have a similar view on
 4 that point. And for that reason, we've decided to
 5 take a single final comprehensive cut at
 6 wordsmithing, as you say. So the text changes you
 7 see hit the--redlined here--are intended to
 8 recapture not only the original permit, but a lot
 9 of the mistakes and misinterpretations that have
 10 been crude and gathered onto it in the
 11 intervening years.
 12 It's to go back to the original
 13 understandings. It's to correct operational
 14 mismatches between something that has to be the
 15 way it is and some permit predictions the way it
 16 was going to be, and we're just reconciling
 17 permit language to realities.
 18 We've gone through this in some detail
 19 internally, and Mark and Maureen are happy with
 20 the language proposed to you. Rather than
 21 spending a ton of time looking retrospectively at
 22 how the errors and mismatches and
 23 misinterpretations came to be, we thought we'd
 24 simply correct them once and for all, start with
 25 a clean slate.

1 This proposed permanent Amendment 5 is
 2 intended to be the stable foundation for
 3 operations for the next 50 years. It may get
 4 amended further, but let's not invite trouble.
 5 It's, in a way, we think this is not only a
 6 permit we can sign, but it's something we could
 7 live under. You know, I think the development is
 8 complex with a lot of moving parts. Phasing is
 9 crucial. And this accurately and in a way that
 10 captures the original approval decision gives us
 11 a roadmap for doing that.
 12 So we're happy with it. The happier you
 13 are with more of these changes, the better. If
 14 there are things you don't like, of course, we'll
 15 talk about those.
 16 As the new guy, I just want to a--kind
 17 of offer a new perspective. Mark and Maureen,
 18 bless their hearts, have been doing this for
 19 decades and they know the ins and outs. They have
 20 files upon files upon files of documents.
 21 And my approach has been that rather
 22 than haggle over past interpretations and past
 23 problems, the purpose of an amendment is to
 24 create new language that will accurately capture
 25 agreement on contested points and give us a

1 stable basis to go forward. We don't have to
2 worry about what happened in 2007 or 2003 or 1998
3 or whatever. We can say, as of 2013, here's an
4 agreed textual foundation for working
5 cooperatively forward.

6 There's a second purpose. Not only is
7 it a roadmap for cooperation and administration
8 going forward, but it is a way of eliminating a
9 lot of frustrating and probably soon-to-be
10 forgotten misinterpretations and mistakes and
11 what have you that generated enforcement
12 problems.

13 I think, again, going back to this new
14 guy perspective, approaching this sort of like
15 Google maps, you know, from 50,000 feet up. You
16 come down and you focus on the marina. There's
17 the marina. Then you say, well, from a bird's eye
18 perspective, this is a marvelous addition to
19 public access to the South Bay. It lets thousands
20 of people come out of the South Bay and the
21 peninsula and have access to the entire South
22 Bay, the North Bay, Sacramento, Seattle, wherever
23 they want to take their boats.

24 This is an access amenity. This is a
25 net plus for public access, not just for boaters,

1 but for anybody who wants to take their kid and
2 their dog and their picnic basket out there and
3 watch the waves lap against Greco Island, or bird
4 watch, fish, whatever. Thousands of linear feet
5 of Bay frontage and shoreline are now accessible,
6 thanks to Westpoint Harbor Marina Development.

7 Formerly, until this was developed,
8 public access stopped at the eastern end of
9 Pacific Shores. There was a big fence there. You
10 couldn't go, you couldn't get anywhere near the
11 bay. With Westpoint Harbor, you can go through
12 what used to be a fence along a road that you can
13 park for free, go to public restrooms, you can
14 take your picnic basket soon. But you'd also walk
15 along the northern and southern approaches to the
16 harbor entrance. You can bird watch, you can
17 watch the boats, you can feel the breeze, you can
18 have access to a place you couldn't have access
19 to before.

20 Net positive is how this functions as a
21 public access amenity, not just for boaters.
22 Obviously, boaters can come to a place they
23 couldn't come to before because now they can tie
24 up safety and securely, freed from vandals and
25 burglars, graffiti artists, muggers, peepers. You

1 can live on your boat for a couple of weeks or a
2 couple of days and not worry about people
3 traipsing all over your boat, all over the dock
4 leading to your boat, picking items off your
5 deck, looking in your windows. A secure place to
6 bring a boat is a wonderful thing. It's public
7 access to the Bay and to the shoreline.

8 But for people coming from land, it
9 functions comparably. It also is public access.
10 So in the sense that it is a net positive,
11 there's nothing to mitigate. It doesn't have to
12 provide more. It intrinsically is designed to
13 provide a lot. It provides functional public
14 access in large quantities, whether it's square
15 feet or linear feet or functions or operations,
16 you name it. It's a lot of public access where
17 there was none before--and that matters.

18 That basic factual thing, I think, we
19 can all agree on, and I hope you do agree, is
20 that fact of a net positive public access amenity
21 helps dictate the legal limit of the Commission's
22 authority. Where there's no nexus between an
23 adverse effect on public access caused by the
24 project, why then there's no occasion to
25 mitigate. There's no harm to be lessened,

1 reduced.

2 There's a net positive. So when the
3 project provides whole lots-- however you wish to
4 measure it--of public access.

5 BRAD MCCREA: We call it maximum
6 feasible.

7 DOUG AIKINS: Maximum feasible, there
8 you go, consistent with the project--let me throw
9 that in--then there's nothing to mitigate. We
10 can't say well, you provided 10 units of public
11 access, we want another 2 please. Well, wait a
12 minute, those 10 never existed before. These are
13 free 10 units of public access. What is there to
14 mitigate; there's no legal occasion.

15 And the limit is that it must state a
16 factual nexus, a factual adverse effect, which
17 then it becomes that limits the legal authority
18 to mitigate for that. The mitigation must be
19 roughly proportional in degree and in kind to the
20 adverse effect. And, again, where there's a
21 positive effect, there's no occasion for
22 mitigation at all.

23 So there's the project. It is a net
24 positive on public access. By the way, and I
25 don't want to get into this in detail, but it's

<p style="text-align: right;">Page 14</p> <p>1 also a net positive on fill. It provides 26 acres 2 of new bay, and the fill involved is negligible 3 by comparison. It's, let's just say, 26 units of 4 open bay waters and something far less than 26 5 units of fill, so it's a net positive.</p> <p>6 But back to the issue of what is the 7 project. The McAteer-Petris Act and the Bay Plan 8 both provide that the property owner defines what 9 the project is. The project is the project is the 10 project, and the Commission has the legal 11 authority to, number one, ensure that the project 12 is consistent with the McAteer-Petris Act and the 13 zone regulations and the Bay Plan, and is 14 consistent with other applicable laws that the 15 Commission is entitled to administer, including 16 the U.S. Constitution--but that's it.</p> <p>17 The owner decides what the project is, 18 and the Commission has the legal authority to 19 regulate adverse effects on the Bay in a manner 20 that's consistent with the project.</p> <p>21 So when we come up with a project 22 element or feature, such as no public access to 23 the guest docks, it is the Commission's legal 24 obligation to articulate a factual nexus on 25 public access, a factual adverse effect on public</p>	<p style="text-align: right;">Page 15</p> <p>1 access, sufficient to say no, no, no, you have to 2 open that guest dock up to public access.</p> <p>3 Now, again, getting back to the 30,000- 4 square foot level--30,000 foot up-level. If it's 5 a net positive for public access and if the 6 Commission lacks the legal authority to mandate 7 public access to private structures in the Bay, 8 like docks and boats, then there's no police 9 powers rationale, no public interest rationale 10 that could be articulated by the Commission to 11 justify a permit condition that says you have to 12 open your boats and the structures that connect 13 your boats to the land for public access.</p> <p>14 The public's not harmed by the 15 deprivation of that public access to my private 16 boat. They have no right to access to my private 17 boat to begin with. If I access my boat by dingy, 18 they don't have a right to my dingy. If I access 19 my boat by a dock, they have no right to my dock.</p> <p>20 They have a right of access to the 21 shoreline and to the bay. Those two phrases are 22 used dozens of times throughout the Bay Plan, the 23 Act, and your charter, your guidelines, your 24 design guidelines. You have authority to regulate 25 access to the shoreline and the bay, not to boats</p>
<p style="text-align: right;">Page 16</p> <p>1 and not to structures--private structures--placed 2 in the bay.</p> <p>3 So when you look at what does the Act 4 in the Bay Plan authorize, it authorizes you to 5 make sure there's plenty of opportunities to get 6 to the bay and to get from the bay to the land. 7 Access across the shoreline is your proper scope 8 of authority. The project provides umpteen access 9 units across the shoreline to the bay from the 10 land, to the land from the bay.</p> <p>11 There's no legal authority for 12 requiring access to private structures, docks, 13 and boats placed in the bay. And if there were in 14 the Act, that might very well be in a given 15 instance of a permit condition, might very well 16 run afoul of the new Koontz decision. Koontz v. 17 St. John's River in Florida, it's about six weeks 18 old, that said--that extended the Nollan/Dolan 19 Nexus Principles to both economic permit 20 conditions, permit conditions requiring 21 performance of some duty or work, and also 22 threats of denial of a permit based on inclusion 23 of an unconstitutional condition.</p> <p>24 So where any permit condition exceeds 25 its nexus limit, it's by definition</p>	<p style="text-align: right;">Page 17</p> <p>1 unconstitutional, and it can't be administered, 2 it can't be imposed by the Commission. And this 3 is new. It wasn't true last year. It's a brand 4 new case, not a brand new principle. The 5 principle's been around since Nollan/Dolan.</p> <p>6 But it's nice to see so clearly 7 articulated, just in time for this meeting, a 8 constitutional limit on the Commission's 9 authority to say you must give the public access 10 to your private property. That's an invasive 11 taking imposed by regulatory permit. And it's 12 impermissible in this instance because there's no 13 nexus.</p> <p>14 There's no adverse effect caused by the 15 public on the locked gates that are landward into 16 the gangway leading to the boats.</p> <p>17 A private property owner is entitled 18 legally to lock that gate and prevent the public 19 from wandering all over millions and millions of 20 dollars' worth of boats.</p> <p>21 This entire function of this commercial 22 enterprise is to provide safe, secure, peaceful, 23 private berthage for private boats. Some of them 24 are very expensive; some of them are very 25 fragile; some of them are very old and valuable.</p>

1 They all have lots of moveable gear that can be
2 stolen; they all have windows that can be peeped
3 into; they all have people coming and going who
4 could be mugged or robbed. And providing a secure
5 environment for these boats is mandatory for the
6 marina to function as a marina.

7 So given that the inherent design of
8 the project, which is the owners sole
9 responsibility, provides umpteen access units,
10 let's say for discussions' sake. The Commission
11 has no legal authority to request more, certainly
12 no request--no legal authority to mandate more.

13 So a condition that says we demand
14 access to your private guest docks and boats is
15 impermissible from the outset. We don't agree to
16 it and never will. And if it's imposed, we'll
17 contest it. It's simply impermissible. That's the
18 issue on access to the docks.

19 BRAD MCCREA: Can we stop there?

20 DOUG AIKINS: Sure.

21 BRAD MCCREA: It sounds like you're
22 going to move on to something else.

23 DOUG AIKINS: Well, you gave us a good
24 list here.

25 BRAD MCCREA: So, John, why don't you

1 weigh in. Go ahead.

2 JOHN BOWERS: Doug, if we were sitting
3 here having this conversation in 2003--when was
4 the original permit issued?

5 MARK SANDERS: '03.

6 JOHN BOWERS: The process that we go
7 through here is one in which an applicant applies
8 to us for a permit, and we act on that
9 application. And in the process of considering
10 that application, there is a lot of back and
11 forth and give and take, a lot of discussion. And
12 it is not uncommon for the kinds of
13 considerations that you have just raised to be
14 raised in that context, in the context of our
15 consideration of an application for a permit that
16 we have not acted upon.

17 And that is the proper context for
18 those kinds of considerations to be presented to
19 us. We are not in that situation here.

20 DOUG AIKINS: I think we are.

21 JOHN BOWERS: Well, I strongly disagree.

22 DOUG AIKINS: We've applied for an
23 another--an amendment.

24 JOHN BOWERS: Well, I understand that.
25 But we are talking about an amendment to a permit

1 that has been in existence for six or seven years
2 now.

3 DOUG AIKINS: Let me be frank. It has
4 problems built into it, including an
5 impermissible access condition. And the purpose
6 of the amendment is to take out the problematic
7 language.

8 JOHN BOWERS: I understand. I understand
9 your viewpoint about that.

10 DOUG AIKINS: Well, it's not a
11 viewpoint. It's a fact. When you amend a permit,
12 you take out some language, you put in new
13 language.

14 JOHN BOWERS: I used to work for the
15 California Coastal Commission. And I worked for
16 the California Coastal Commission in 1987 when
17 the Nollan decision came down. And we were--one
18 of the things that happened after the Nollan
19 decision is that we were bombarded with
20 applications for amendments to permits that had
21 been granted prior to the Nollan decision,
22 subject to public access requirements that
23 property owners then viewed to be inconsistent
24 with the Nollan decision.

25 DOUG AIKINS: I'm not surprised.

1 JOHN BOWERS: And they may have had, in
2 some cases, those arguments may have had some
3 validity to them. But in every single case, the
4 outcome of the legal challenges that resulted
5 from those efforts to undo those public access
6 requirements that were perceived to be
7 inconsistent with the standards of the Nollan
8 decision were unsuccessful. Because what we were
9 dealing with in that situation was an already
10 completed regulatory process, and the Courts
11 refused to accept the invitation from the
12 property owners to take the Nollan decision and
13 apply those principles retroactively.

14 DOUG AIKINS: Understood. Here, we have
15 a distinction. We're not at the end of a process;
16 we're at the beginning. We just applied for an
17 amendment to change the language, and we intend
18 to get that amendment considered by the
19 Commission.

20 But more importantly, I think the
21 fastest way, rather than to perpetuate a
22 disagreement whether our language on public
23 access is correct or founded or justified and
24 bring that contested case to the Commission, the
25 simplest way for you all to recognize

1 administratively the validity, the merits of our
2 argument that the public should not be traipsing
3 all over private docks and boats. It's just not
4 the right way to operate a marina. It has no
5 place in a marina. It's unsafe, it's insecure,
6 it's dangerous. It imposes liability on the
7 operation; it imposes the risk of the public
8 hurting themselves.

9 JOHN BOWERS: You said something five
10 times now that I want to clarify. No one is
11 suggesting that private boats be public access.
12 So I'd like you to stop saying that we're
13 requiring public access to peoples' private
14 boats, because that's not what we're suggesting.

15 DOUG AIKINS: I think it's a fundamental
16 factual distinction we need to clarify. Because
17 the marina is a resting ground for boats, okay,
18 it's all about the boats. The docks are something
19 that you can tie a boat to, and it allows people
20 to go between land and boat. It's a bridge, okay.
21 It has no function except to get to the boats.
22 You can't practicably, feasibly, consistent with
23 the project put a locked gate at every boat. The
24 only way you can feasibly, factually,
25 responsibly, economically make a secure

1 environment for those boats is to put a locked
2 gate at the end of the dock. You could have one
3 gate or you could have one gate per boat; in this
4 case, 200 something, 500 something.

5 JOHN BOWERS: Couldn't that case be made
6 for--I mean, I don't see how that's really any
7 different than a public parking lot where a
8 motorcycle is parked. We're not--we let people
9 bring motorcycles to a public parking lot, but we
10 don't invite the public to get on peoples'
11 motorcycles.

12 DOUG AIKINS: Well, if you invite the
13 public to get on these docks, then there's
14 nothing preventing them from wandering all over
15 the boats--nothing.

16 JOHN BOWERS: There's nothing to keep
17 people from sitting on somebody else's motorcycle
18 in a public parking lot.

19 DOUG AIKINS: I'm not sure your analogy
20 holds. This is an instance where you have the
21 land where people can be legitimately and a boat
22 where they can't be, and we're talking about the
23 bridge between the two. In a motorcycle parking
24 lot, there's no bridge. This is literally a
25 bridge to a boat. And we're saying the right

1 place for the locked gate is at the land at the
2 end of the bridge, not at the boat.

3 BRAD MCCREA: Anyway, John, I digressed.

4 JOHN BOWERS: Well, I mean, that's a
5 policy argument. I mean --

6 DOUG AIKINS: No, it's an operational
7 argument and it's a legal argument as well.
8 Because here's why: the property owner has
9 defined the project. Your authority to regulate
10 is limited by regulations that are, number one,
11 prevent an adverse effect on the bay and
12 shoreline; and number two, are consistent with
13 the project.

14 You can't tell the operator, you have
15 to put 500 locked gates, one per boat, if he
16 doesn't want to. If he says I'm going to put six
17 locked gates, one per gangway, that's how he
18 defined the project. Your regulations have to be
19 consistent with the project. You can't redesign
20 the project.

21 JOHN BOWERS: We do it all the time.

22 DOUG AIKINS: Well, that was then.

23 JOHN BOWERS: We redesign projects all
24 the time. I mean, that's what we're here for.

25 MARK SANDERS: Can I just --

1 DOUG AIKINS: Well, fine, but only
2 subject to the limits of your legal authority.
3 You may do it, you may get away with murder, but
4 we're here to draw a bright line.

5 JOHN BOWERS: Nobody disagrees.

6 BRAD MCCREA: I'm sorry, you go first.
7 What were you going to say?

8 MARK SANDERS: I was going to say,
9 there's--we're not filing new ground here.
10 There's 12,000 marinas in the United States. I've
11 spent a lot of time now researching this. I can I
12 think illuminate this more, and I'll cite sources
13 for this. There's three known professional--or
14 expert witnesses on marina security and they all
15 say the same thing: that once you get on over
16 navigable water, the onus of responsibility to
17 protect what they call the "uninitiated public"
18 from danger--if you look up ADA rules, ADA
19 actually speaks about this quite a bit. That for
20 ADA, you've got to have rails so high with no
21 more than 4" spacing, et cetera, et cetera, any
22 place the public can go.

23 If you cannot provide that, it's a
24 dangerous environment. And over water, the onus
25 of responsibility goes on to the operator. And

1 there, so if you follow this through--this is,
2 again, maritime law now that we did go to the
3 trouble of having the Maritime Lawyer's
4 Association of America, which has a recreational
5 marina division, has lots of information and an
6 opinion on this.

7 They said the only practical way you
8 can do that, because there's this principle of
9 shared responsibility. If somebody walks on a
10 dock, no rails, trips on a cleat that's there,
11 hurts themselves, they can sue you. Maritime law
12 does apply, and a certain responsibility applies
13 to the owner. The only safe way to do it is to
14 provide gate security at the top. That's the
15 first point.

16 They distinguish between berthing docks
17 and courtesy docks. Courtesy docks are defined as
18 docks for unloading and loading temporary tie-up
19 for loading boats off the trailers, loading food,
20 getting fuel. They're called courtesy docks. The
21 ADA, Department of Boating and Waterways and
22 there's a federal organization, they all have
23 five definitions of dock types, and each one has
24 certain characteristics.

25 Courtesy docks don't have the same onus

1 of responsibility, which is why your friend down
2 here on Pier 1.5 can have a dock where people can
3 tie up for, in that case, three hours. Generally,
4 not out of the control of the owner. There is no
5 liability for injury or theft or something like
6 that. It's a major, major issue, and so that's
7 why the distinguishing thing is.

8 So when I presented this to the
9 Commission, going back to John's point, I spent a
10 great--I must have--I don't know how many
11 presentations, three DRBB's up to the 2003
12 meeting, and I talked passionately about the need
13 for public access for boaters. Boaters, kayakers,
14 sailors, paddlers who have to get--have to have a
15 way to get to the land. And so I'm going to
16 provide that, and that's why the transient dock.
17 And transient dock has specific definitions. I
18 have 1000 feet of transient dock. It is partially
19 funded by the Department of Boating Waterways. I
20 signed a contract which says I guaranteed to
21 provide public access from the boats to the land,
22 and guaranteed to prohibit public access from
23 land to the boats, because it's dangerous.

24 Adrienne, you talked to the head of
25 Department of Boating Waters, who told me he

1 explained that explicitly, that it violates the
2 contract for a transient dock. And by the way,
3 all the other transient docks, most of which are
4 owned by the State of California, which are all
5 secured.

6 So I would violate a contract under
7 which my transient docks were built in the first
8 place. That's the second thing. I have been now
9 confirmed I am uninsurable if I allow public
10 access, not by boaters, but by people getting
11 down in the docks, I am uninsurable.

12 And the last thing is, I went back and
13 I pulled out all the drawings that were presented
14 to the Commission when we presented this project,
15 including this set, which shows clearly security
16 gates at every gangway. Now this was not
17 included, unfortunately, in the permit when it
18 was finally issued. What was included was the
19 first set of drawings presented at the first DRB
20 meeting, which were obsolete. But the actual
21 drawings presented to the Commissioners shows
22 security gates at every dock.

23 And by the way, the other thing it
24 shows--can you hold that, Erik, for me. This is
25 Phase 1, which was just the docks and the parking

1 lots themselves. Phase 2 had the boatyard. Phase
2 3 had the guest dock, which was sort of the yacht
3 club, the marine store. The guest docks are not
4 even part of the project until Phase 3, which is
5 why it's never been opened.

6 So here I am, I have an allegation that
7 says you failed to open the guest dock to the
8 public when it's not allowed to be opened yet.
9 I've had to violate a contract, and I'd have to
10 give up my insurance.

11 And, by the way, according to the
12 Maritime Lawyers Association, maritime law
13 actually does apply. They said they find not a
14 single example for a marina that was sued for
15 injuries on the dock, not one example where they
16 were able to get protection under California
17 statute. However, there were many, many, many
18 examples where they were sued successfully of
19 people that walked on the dock uninvited,
20 tripped, fell, drowned sometimes, and
21 successfully sued the marina.

22 And they concluded, they said you are
23 irresponsible if you don't have security gates on
24 berthing docks, different than--which is why our
25 dock for the launch ramp is open, because it's

1 not a berthing dock. It's a courtesy dock.

2 So there is 48 different ways why we
3 cannot have our berthing docks open to the public
4 any more than virtually 99 percent of all marinas
5 in the United States of America do. Everybody has
6 gates.

7 ERICK BUEHMANN: So can I come back for
8 a second. And we understand that all those
9 points, you've made them before. And we knew
10 that--and just kind of go back and talk about the
11 process and how we got here and how we got the
12 amendment that we gave to Mark to sign back in
13 June.

14 DOUG AIKINS: Is that really relevant in
15 this case?

16 ERICK BUEHMANN: Yes, because the
17 reason--so in that amendment, we say, you know,
18 you must open this by I think it's October 31,
19 2013. Because our--we knew this was the main--one
20 of the main sticking points for Mark, for you
21 when dealing with this permit. And we wanted to
22 give you an opportunity to amend the permit. And
23 what we were thinking about for this amendment
24 was just to resolve these enforcement issues
25 enough so that we could have a permit that you

1 could sign, and then you could amend it later to
2 take out, you know, whatever you--that kind of
3 massive change. Because that kind of change is a
4 material amendment, from our perspective, and
5 that would require a lot more, you know, dealing
6 with all this evidence. You would be able to
7 present all this evidence. And I just didn't get
8 that from your letter. I didn't get any kind of
9 response to that kind of offer that we were
10 giving.

11 DOUG AIKINS: Let me make short circuit
12 that just a little bit. I think at this point in
13 the process, it does little good to go back to
14 rehash the prior dialogues. Because right now
15 with an amendment pending, we're asking you all
16 to articulate the adverse effect on the bay and
17 shoreline caused by gating off the landward end
18 of a gangway leading to a dock. If you can't
19 articulate a factual adverse effect on public
20 access to the bay and shoreline, then you have no
21 legal authority to impose this condition.

22 Now, you've heard Mark's rationale.
23 It's a liability issue, it's a safety issue, it's
24 a security issue, blah, blah, blah, all the text,
25 the nuts and bolts that go into the property

1 owner defining the project the way he has. We
2 have not heard anything back from the staff or
3 Commission regarding why it is that this is
4 legally justified. And in order to be legally
5 justified, of course, it has to be factually
6 justified. It has to compensate for an adverse
7 effect on public access.

8 And as we covered in the first couple
9 of minutes, this is a net positive grant of
10 public access across private property. What is
11 the rationale for requiring more of a different
12 kind, more of a kind that leads up to the docks
13 and boats?

14 ERICK BUEHMANN: No, I understand what
15 you're saying. It's not that we're--I think
16 there's some confusion here because--and this is
17 where you guys correct me if I'm wrong. But the
18 permits, as we read it, you know, this was the
19 salt pond. So we're in a salt pond jurisdiction
20 here.

21 DOUG AIKINS: We can get into that too.

22 BRAD MCCREA: And so, this was a salt
23 pond.

24 MARK SANDERS: It's never been a salt
25 pond.

1 MAUREEN SANDERS: Historically, it's
2 never functioned as a salt ponds.

3 MARK SANDERS: A hundred years of proven
4 records, it's never been a salt pond.

5 BRAD MCCREA: Well, then why did you
6 sign a permit that said it was?

7 MARK SANDERS: I objected. That was the
8 main dialogue, and that's when the Commission
9 instructed staff to write, because it was a big
10 argument, they said all right, we will--it's our
11 opinion. And you were instructed, not you, but
12 Steve McAdam, was instructed to put the language
13 that says, it is the opinion of the BCDC that
14 this is a salt pond, because at the time, they
15 argued, we're still trying to decide what are
16 salt pond issues, what salt pond policy is.
17 Cargill said this has never been a salt pond. And
18 I provided records last time, photographic
19 records, showing it was a boatyard in 1916.

20 BRAD MCCREA: All right, we'll set that
21 aside.

22 ADRIENNE KLEIN: One thing to consider,
23 our Bay Plan shows it as salt pond jurisdiction.
24 That's --

25 MARK SANDERS: Yeah. Where it came from,

1 it's interesting. I went back to the all hands
2 meetings that were hosted by the Corps of
3 Engineers in the late 1990s when the Corps said
4 this is actually not a salt pond, this is a
5 bittern pond. And Steven McAdams went on record
6 as saying, well, we look at all ponds if they
7 were owned by Leslie at the time, as salt ponds.
8 In the course of--well, this is technically not a
9 salt pond by definition. And Steve says, well, we
10 think they're all salt ponds. And that was that.

11 Now, I didn't much care at the time
12 because I didn't think --

13 BRAD MCCREA: The only reason I bring it
14 up is because of the distinction that the salt
15 pond policies are a little bit different in the
16 Bay Plan. They talk about maximum open water and
17 maximum public access, and maybe it's a moot
18 point or irrelevant for what I'm about to say.
19 And that is that it appears as you read the
20 permit that all of the docks were supposed to be
21 open to the public. Right?

22 MARK SANDERS: Where --

23 BRAD MCCREA: Wait, wait, wait, we're
24 getting to that. We point to the exact light of
25 the sentence, right, maybe you've seen it

1 already--that phrase. And if that's--but today,
2 we're saying we are fine with the gates.

3 DOUG AIKINS: You are fine with the
4 gates?

5 BRAD MCCREA: All of the different
6 docks. This is where I wish--there's Erik--where
7 all of the different docks throughout the
8 [UNINTEL], except for the one dock over there by
9 the guest dock. So that's why I think there's a
10 bit of misunderstanding.

11 MARK SANDERS: That's the courtesy dock.

12 DOUG AIKINS: What's your rationale for
13 wanting access to that?

14 BRAD MCCREA: That it's already
15 required.

16 DOUG AIKINS: No, no, we're amending the
17 permit. We're fixing that.

18 BRAD MCCREA: No, but you're asking to
19 remove it from the already required action
20 [UNINTEL]--

21 DOUG AIKINS: Yes, yes we are. Yes, we
22 are.

23 ADRIENNE KLEIN: We don't know how long
24 you've been--obviously, you've gotten up to speed
25 very quickly and we commend you for that. Our, as

1 Brad just articulated the criteria, the
2 analytical basis for the decisions in salt ponds
3 are slightly different, but very similar. The
4 access at the time of the original approval
5 included these docks. So while there weren't--let
6 me just finish my thought, if you don't mind. So
7 while there weren't, at least from our
8 understanding, Mark says that it was always
9 anticipated. You just referred to plans that
10 anticipated gates. And we're fine with all these
11 gates, we have no problem with that.

12 But this is part of the maximum public
13 access equation in the already signed permit. And
14 so, you know, you're asking us to articulate the
15 legal and factual basis for that. It's part of
16 the package that we--that is part of the signed
17 permit. And so, we are--we understand, we're
18 really trying to meet you halfway and we
19 understand some of the concerns. What we're
20 asking for is we're willing, I think we're
21 willing to give up half of it. Is that correct?

22 MARK SANDERS: I can't remember exactly
23 what we talked about. But the point is that --

24 ADRIENNE KLEIN: There's two separate
25 docks there. Am I correct, incorrect, Erik?

1 ERIK BUEHMANN: I mean --

2 MARK SANDERS: The drawings show one.

3 BRAD MCCREA: We can get into the
4 negotiations, but I think your point is more
5 about the Commission made a finding about what is
6 maximum feasible public access. And now that some
7 of your public access that remains open, what I'm
8 hearing you say, Doug, is well, now there's
9 people there. So you don't need all that anymore,
10 and so we're asking that you not require what you
11 required.

12 DOUG AIKINS: Close. Let me just
13 paraphrase myself. What I hear you saying,
14 Adrienne, is that the rationale is that it got
15 stuck into the permit and there it is. What I
16 hear you saying is --

17 ADRIENNE KLEIN: Or because it provides--
18 so our Bay Plan policies indicate that the types
19 of access that should be provided to the public
20 should be varied, and it should be physical
21 access, as you said, to and along the shoreline.
22 It should include views of the bay through
23 developments and from public roads.

24 DOUG AIKINS: It does all that.

25 ADRIENNE KLEIN: It should include in

1 the cases of, you know, projects from cities, for
2 example, large parks. And, you know, access onto
3 the water is a different kind of experience. We
4 have Belvedere's at the mouth of the harbor, so
5 that you can see the flow of the tide. You can
6 get a little bit closer to Greco Island. You can
7 perhaps see harbor seals out there beyond the
8 perimeter of the marina base.

9 So getting right down onto a dock and
10 being able to be that much closer to the water
11 is, from our interpretation of our policies, an
12 added public benefit.

13 DOUG AIKINS: Granted.

14 ADRIENNE KLEIN: So the majority of the
15 access at this marina is to and along the
16 shoreline. And some of it, you know, a very small
17 percentage, is supposed to be a little bit
18 closer, right on the water.

19 DOUG AIKINS: Well, I hear what you're
20 saying about how nice it would be and how it is a
21 different form and experience and what have you.
22 It would be nice. We'll grant that it would be
23 nice.

24 ADRIENNE KLEIN: We've asked for a
25 factual basis from [UNINTEL PHRASE]. And we'll

1 try and articulate that for you.

2 DOUG AIKINS: And the factual basis is
3 that providing different types of shoreline
4 experiences is a good thing. The caveat, the
5 limitation on that, is it has to be consistent
6 with the project.

7 ADRIENNE KLEIN: And if I can just also,
8 I meant to say this earlier. Sorry, I didn't mean
9 to interrupt you. But this, you know, the permit
10 has a requirement that the required public access
11 areas be permanently guaranteed through a --

12 DOUG AIKINS: Dedicated.

13 ADRIENNE KLEIN:--[UNINTEL] title. And I
14 don't know if you've had a chance to look at that
15 yet.

16 DOUG AIKINS: I did.

17 ADRIENNE KLEIN: But you have gone
18 through the process of actually--and we really
19 appreciate this permit compliance condition being
20 fulfilled--recording and dedicating the public
21 access, and that process included the docks. And
22 so, it's also--you know, as John was saying a few
23 minutes ago, it's bit of a conundrum to us that
24 this issue's being raised now kind of a decade
25 later.

1 DOUG AIKINS: Let us help you with that.
2 Here's the thing. We're here to amend the permit,
3 take out all the bad stuff, the stuff that
4 interferes with operation of the project. And
5 this public access to private docks is a problem
6 for us. Mark and Maureen have articulated this
7 numerous times over the years. By now, you're
8 experts on how to run a marina. You don't let the
9 public traipse all over your docks and your
10 boats, and you can't separate the two except by
11 gates, and the place to put a gate is at the
12 landward end.

13 So on the facts, on the ground that to
14 run a marina, we would all agree now if we were
15 taking a first look at this, of course you don't
16 want public access to these docks. That's just a
17 dumb idea. And so, we would say that we have
18 defined this project for all these good reasons--
19 liability, safety, security, et cetera, et
20 cetera. That's what the project is. And you can
21 regulate; you can impose permit conditions that
22 are consistent with the project.

23 But you can't say, no, no, no, we're
24 going to impose a condition of public access to
25 your private docks. We know it's a good idea from

1 the public access standpoint, but it's not so
2 good as to be able to trump the project. It can't
3 be inconsistent with the project.

4 So what we're saying is granting, it
5 would be nice if some people could just traipse
6 at will among the docks and boats. It's not that
7 good an idea that we can allow it consistent with
8 our project.

9 So we're here now to amend the
10 language. No matter how the language got in
11 there, no matter how the dedication occurred,
12 we're here to fix that problem because it is a
13 fatal problem. It prevents issuance of insurance
14 policies. It prevents people from docking their
15 boats when they see a bunch of loungers and
16 trespassers and vandals with spray cans sitting
17 there waiting for their boat.

18 The project is inconsistent with that
19 condition. That condition has to go. That
20 condition lacks a legal nexus. It's
21 impermissible. It's beyond the scope of your
22 authority to impose it.

23 And beyond that, my first pitch to you
24 right now is, don't you agree it's a bad idea? If
25 you agree it's a bad idea, then we avoid all this

1 other legal hoo-ha.

2 BRAD MCCREA: Do you want me to answer
3 that question?

4 DOUG AIKINS: Yeah.

5 BRAD MCCREA: I think in certain places
6 and in certain instances, you can have the public
7 walk a dock. Have you ever walked a dock in a
8 marina?

9 DOUG AIKINS: Sure.

10 BRAD MCCREA: If it's not gated?

11 DOUG AIKINS: Well, this was a public
12 marina.

13 BRAD MCCREA: But you were in a public
14 marina?

15 DOUG AIKINS: Yeah.

16 BRAD MCCREA: Have you ever walked a
17 dock in a private marina?

18 DOUG AIKINS: Yes, I was a guest.

19 BRAD MCCREA: Well, have you ever walked
20 on a private dock in a private--or a dock in a
21 private marina when you weren't a guest?

22 DOUG AIKINS: I've never gone through a
23 locked gate.

24 BRAD MCCREA: No, I haven't either.
25 That's my point, is that dock walking is a

1 special thing. To get down to a dock is a
2 remarkable experience. And so, I think you can
3 have places in certain instances where it can
4 work. Maybe it's through management, perhaps is
5 right. And perhaps by allowing--that's why we
6 said, you know what, we can--you guys want to get
7 rid of all access to all the docks. And we said,
8 look, how about just this one dock over here.
9 That seems like a reasonable--

10 MARK SANDERS: [UNINTEL PHRASE]--you
11 guys, there's two issues where--you're using a--
12 it's a little bit like the houseboat. A houseboat
13 to me means certain things; and other people have
14 said, no, a houseboat is somebody that lives on a
15 boat. It's a semantic thing.

16 When we presented, and we have cross-
17 sections from the--not this lame drawing--the
18 actual drawings from the permit presentation
19 shows cross sections showing the gates. And it
20 shows the language that the permit talked about
21 viewing of the boats, and it was for that reason
22 that we, in accordance with ADA requirements for
23 marinas, by the way, we have a deck at the top of
24 every gangway with ADA required fencing on it so
25 they can safely do it. That's what we always

1 thought and the way we presented our project at
2 the time.

3 It's only 10 years, 9 years later that
4 somebody says Oh, no, no, the public access, you
5 thought we meant public access for boats; we
6 meant public access for land. That came out of
7 the blue. That's the first thing.

8 The second thing, Brad. The reason all
9 marinas have a contract that every marina owner
10 and every boat owner has to sign, and he signs on
11 behalf of himself and guests, is to give
12 liability protection on the docks. Every
13 operator, vendor, boat cleaner, everybody that
14 goes on the docks must sign that, and that's
15 uniform in every marina organization there is.

16 And the reason is then you have
17 protection against liability over the water under
18 maritime law. And that's the reason why you can't
19 let people that (a) are not knowledgeable as with
20 what we call seamen, understand seamen things,
21 and they have not signed a contract giving
22 identification to the owner. You can't allow them
23 on the docks.

24 And that's the distinction between a
25 transient dock, which is very, very well

1 documented. And everything you say is illegal for
2 a transient dock.

3 ADRIENNE KLEIN: Mark, in your earlier
4 statement today, you said that you will have
5 transient courtesy docks.

6 MARK SANDERS: We do have.

7 ADRIENNE KLEIN: Did I understand you to
8 say that?

9 MARK SANDERS: No, transient docks,
10 they're officially called transient docks. I gave
11 you a letter that I wrote to DBW saying, can I
12 rename them guest docks because people object to
13 the word transient. You have that letter. And so,
14 they are transient docks.

15 ADRIENNE KLEIN: These are transient
16 docks?

17 MARK SANDERS: That dock N and P, that
18 1000-foot dock facing the yacht club is a
19 transient dock. The courtesy dock --

20 ADRIENNE KLEIN: No, I'm still not
21 clear. These ones.

22 MARK SANDERS: Yes.

23 JOHN BOWERS: They're in the yellow.

24 MARK SANDERS: That's a transient dock.
25 The two courtesy docks we have are the one down

1 by the launch ramp, the lower right-hand corner,
2 which is for unloading and loading boats; and the
3 other courtesy dock is up from that, which would
4 be the fuel dock and the pump-out dock. Temporary
5 tie-up, no more than four hours.

6 ADRIENNE KLEIN: So can the public go on
7 these docks?

8 MARK SANDERS: That's what courtesy
9 docks are, absolutely.

10 ADRIENNE KLEIN: So just, like, Pier
11 1.5.

12 JOHN BOWERS: Just off the top of my
13 head.

14 ADRIENNE KLEIN: So can we switch the
15 requirement from here to here?

16 MARK SANDERS: If we wanted to rename
17 the public--the dock that's for the--it's about a
18 400, like, 300-foot dock for a launch ramp as a
19 courtesy dock. We'll call it the launch ramp
20 courtesy dock.

21 ADRIENNE KLEIN: To me, this is the
22 launch ramp. This little piece of concrete pad
23 that --

24 DOUG AIKINS: Can you circle it on the
25 thing?

1 MARK SANDERS: Adrienne, there's
2 actually, if you look at ADA guidelines, they
3 make a big point of defining say--they actually
4 say, they have a paragraph that says, a launch
5 ramp is not a boat launch. A boat launch is the
6 ramp, the landing dock, fire protection, washed
7 out area. There's a whole bunch of things.

8 So our boat launch is here, and we have
9 a long dock here, which has a gangway and no
10 gate.

11 ADRIENNE KLEIN: Right, that one little
12 viewing, right.

13 MARK SANDERS: That is a dock for
14 loading and unloading boats. That's a--it's
15 called a launch ramp dock upload. Sometimes, they
16 call it a landing dock.

17 MAN 1: What do you call it?

18 MARK SANDERS: I call it a landing dock.
19 That's the correct term, landing dock, and it's a
20 courtesy dock.

21 ADRIENNE KLEIN: Right, that we know is
22 public.

23 BRAD MCCREA: I think Adrienne said --

24 MARK SANDERS: Well, they're all public.

25 BRAD MCCREA: Adrienne's talking about

1 the gas dock.

2 MARK SANDERS: They're all public.

3 BRAD MCCREA: Let's say public is just
4 like an ungated area where people can go.

5 ADRIENNE KLEIN: Ungated.

6 MARK SANDERS: No, but let's use the
7 correct terminology for the industry. A public
8 dock is where boaters--I mean, why would you have
9 a private dock? If it's private, nobody can use
10 it.

11 ERIK BUEHMANN: I'm saying that because
12 of the law. So I want to make sure that it's, you
13 know, public access.

14 ADRIENNE KLEIN: We have to distinguish
15 because public--BCDC mandated public access. We
16 don't want to confuse the different kinds of
17 public.

18 ERIK BUEHMANN: There's an
19 incompatibility there, but we need to make sure.

20 MARK SANDERS: So we probably will move--
21 --because the wind blows here, we had the--
22 originally, the fuel dock was here, by the way,
23 when the permit was issued. We moved it over
24 here. And now we're thinking, well, the wind
25 blows here. If we ever had a spill, that's an

1 ugly thing. We're going to make this the fuel
2 dock and the pump-out dock.

3 And so, this would be a BCDC definition
4 of public dock because anybody can walk on it at
5 any time. But you can't leave a boat more than
6 four hours. That's the definition. And there's
7 tons of these docks.

8 BRAD MCCREA: Is there any docks you're
9 planning over here?

10 MARK SANDERS: This is boatyard dock,
11 and that's heavy nasty stuff. You're dropping
12 engines and loading masts.

13 BRAD MCCREA: So we have to get to your
14 question. Are you suggesting that we trade the
15 requirement, the current BCDC require dock
16 access--and dedicated, I might add--over here for
17 docks over here? Are you open to that idea, Mark?

18 MARK SANDERS: I am, yes. I'm compulsive
19 about one thing. One thing.

20 ADRIENNE KLEIN: Only?

21 MARK SANDERS: When I presented this, I
22 had public access and I had marina amenities,
23 including this dock. And I was bragging about
24 what I'm going to do for all these yacht clubs.
25 It was after that that the drawings were changed.

1 I tracked down the landscape architect that said,
2 yes, I was called by BCDC staff and they made me
3 change the drawing after the fact. So that's how
4 that got to be labeled like that.

5 BRAD MCCREA: Did you answer the
6 question?

7 MARK SANDERS: Yes. The answer is, this
8 is going to be public the way you define it, and
9 this is going to be public, and that's the way it
10 should be.

11 BRAD MCCREA: And this is dedicated.

12 MARK SANDERS: It already is, yeah,
13 yeah, yeah.

14 BRAD MCCREA: Is it? And then we can
15 change the language--

16 ADRIENNE KLEIN: Well, no. Under the
17 BCDC permit, it's not dedicated public access.

18 JOHN BOWERS: Dedicated in the sense of
19 --

20 DOUG AIKINS: We can undedicate and
21 rededicate.

22 MARK SANDERS: Can we call, can we name
23 terms that somebody that's a maritime person
24 would recognize it? Public docks means public can
25 come in and tie and pay a fee and leave their

1 boat there. That's a public dock.

2 BRAD MCCREA: What do you call the kind
3 of docks where people walk down and sit and eat a
4 sandwich?

5 ADRIENNE KLEIN: The problem that we're
6 trying to solve, Mark, is not the boater access.

7 MARK SANDERS: Well, I don't know of any
8 dock where people go down and sit and eat a
9 sandwich. There's decks that stick out.

10 DOUG AIKINS: I think at Coca-Cola, they
11 do that.

12 MARK SANDERS: Now what I think you guys
13 want, you want people --

14 DOUG AIKINS: Don't they know yet?
15 Sorry, Mark. What were you saying?

16 MARK SANDERS: This dock is a courtesy
17 dock that everybody would understand what
18 courtesy dock. This is a courtesy dock. Come, tie
19 up, get fuel, pump out, unload your trash, go get
20 up and get beer. That's a courtesy dock.

21 This is a publicly available transient
22 dock. So if there's some way that BCDC can
23 embrace industry-wide terminology. Say, you know,
24 these transient docks are also open to the
25 public, and per the DBW requirements are allowing

1 access to the land for boaters and does provide
2 security from the land back onto the boats.

3 BRAD MCCREA: We will embrace it.
4 Courtesy docks, it is. So what we're asking is,
5 can we change the language in the permit. And
6 instead of this stuff, these--what are they,
7 guest docks? I'm messing up my terminology.

8 MARK SANDERS: Well, guest dock and
9 transient is the same.

10 ERIK BUEHMANN: Okay. So instead of the
11 transient docks being walking.

12 MARK SANDERS: No, courtesy.

13 ERIK BUEHMANN: Instead of people being
14 able, any person walking along the shoreline--not
15 a boat owner or a boat operator, right? Instead
16 of having them walk on this, we just change the
17 language in the permit to include these things.

18 MARK SANDERS: You could do that. And,
19 Brad, for what you intrinsically want, what I
20 would tell you--but I wouldn't allow it in the
21 permit because I'm terrified of making any
22 changes that leave me exposed when we do--we're
23 planning a restaurant, maybe two restaurants. We
24 do plan a rowing center. When those open, these
25 will need to be converted to a secured. I mean,

1 that was my original intention--a place where
2 boaters can go and people can come and see
3 boaters. That's my intention.

4 BRAD MCCREA: You're saying once there's
5 restaurants, people are going to be coming and
6 you're going to be more informal.

7 MARK SANDERS: Of course. Why would I
8 not want to have as many people down there as
9 possible. And then --

10 ERIK BUEHMANN: But it also sounds like
11 we don't--you don't want something in a permit
12 that requires you to always have that be there.

13 MARK SANDERS: Oh, Erik, I've been bit
14 in the ass so many times by the most simple
15 things.

16 ERIK BUEHMANN: So we understand that,
17 your intention, and that's why we're going
18 through asking these questions because we want to
19 make sure that that's not--

20 MARK SANDERS: So when I come back and
21 say, by the way, Brad, I want to build a
22 restaurant, two restaurants off here. You say,
23 well, you know what? That means this probably
24 should become a courtesy dock and that makes
25 sense. And by the way, it means they can only tie

up for four hours, go up and get a meal.

BRAD MCCREA: You have authorization to build a restaurant up there already, so I don't think --

MARK SANDERS: Yeah, but I have to go back for a construction project.

BRAD MCCREA: We're not coming asking condition of regulatory requirements.

DOUG AIKINS: Before we agree, I'm thinking of a dynamic for, number one, we've marked up the permit the way we like it. If you guys could take a second editorial pass to tweak the language to where you like it. When you look at it, in due course, think about it. Because there are a lot of operational consequences that flow from this. On one hand, you've got big boats coming in to get fueled, get supplies and what have you. Then you have the public lounging there with their feet in the water and a picnic basket and a sandwich. It may or may not be all that compatible, or it may be that we have to tweak something in the design to make it compatible.

So if you guys will take a second editorial pass and tell us the language that you would accept in the way it was [UNINTEL].

burden of editorializing and we fix this problem. To recognize the deal that you guys are discussing, we would enunciate the language that we've talked about.

MARK SANDERS: Actually, you know what, all we have to do is not include the changes that--perhaps it was Erik that did it--it changed the 10 guest berths, which would be the same. Just erase that whole thing, leave it the way it was.

ERIK BUEHMANN: I think it would be better actually what Doug is suggesting because there's a lot of terminology issues that sometimes you have--you know, sometimes we'll use terminology that you don't agree with.

DOUG AIKINS: But we'll do it.

MARK SANDERS: Well, let me give you the--I'll give you the documents. So California DBW and ADA all have definitions for this. Brad, can I give you this? This is the current drawing we ought to be using.

ERIK BUEHMANN: That would be good, yes.

BRAD MCCREA: Love to have it, yes.

MARK SANDERS: Because that one's 11 years old now.

BRAD MCCREA: Doug, I want to be really clear. We're the end of our rope.

DOUG AIKINS: Well, we're at the end of our rope too. That's certainly not an issue.

BRAD MCCREA: Iterations is not what we're looking for.

DOUG AIKINS: We want to wrap this up as soon as possible.

MARK SANDERS: Well, what is the language that we put in that I thought it said--well, what happened was the language was changed, and I think it missed the mark with the intention. The language says the 10 guest berths, which are another completely different thing, by the way. The 10 guest berths now become too long docks.

BRAD MCCREA: I think what we're talking about is changing the language to get away from all of the requirements for access here on the water, and move towards access on the water at these two courtesy docks.

ADRIENNE KLEIN: Which arguably is already in the permit that it would be expressly dedicated.

DOUG AIKINS: How about if we take that

ERIK BUEHMANN: Could you also supply an 8-1/2 x 11 copy?

MARK SANDERS: Yeah, no problem. And you have CAD of these already. But that's the current way it really is.

BRAD MCCREA: But there's no docks proposed here.

MARK SANDERS: Oh no, I'm just saying this is--there's more to it, but this is the current layout.

ERIK BUEHMANN: Can you provide--this was something I was going to ask because I was going to suggest maybe what we do is because we're not going to be able to hammer out every single thing. We do maybe a cover letter and a copy of the amendment and send it to you.

DOUG AIKINS: No, we'll take--we have the terminology.

ERIK BUEHMANN: Why don't you do that, then we can [UNINTEL].

MARK SANDERS: This is the current drawing package that you guys have. And it shows this is N and P dock; this is all the docks. This is a down-rev, but you show this one, show this one. We're about to come back with this anyway,

1 the boatyard design.

2 BRAD MCCREA: So we'll need an exhibit
3 though that shows the docks that you're to
4 dedicate.

5 MARK SANDERS: No problem. And by the
6 way, that was the problem with the exhibit that
7 was attached.

8 BRAD MCCREA: And I knew you would have
9 a problem with that.

10 MARK SANDERS: The dotted lines were
11 right; it's just the drawing was wrong. For
12 example, there's no connection between the
13 parking lot to the launch ramp.

14 ERIK BUEHMANN: Well, it would be great
15 to have a new more accurate exhibit.

16 MARK SANDERS: We can do that.

17 BRAD MCCREA: That's something that we
18 would really like for that. This is the old
19 exhibit. It doesn't work for anybody anymore. We
20 need a new Exhibit A to the project.

21 DOUG AIKINS: And new terminology. We
22 can satisfy your problem about delay by making
23 this tweak and getting it back to you with a
24 cover letter.

25 BRAD MCCREA: That would be really

1 great. And then because I think only one of the--
2 you know, the rest of the stuff, I think, is just
3 really small stuff. And then we can explain in
4 our response or something in a letter, like,
5 misunderstandings like the fishing and swimming
6 thing. Like, we don't want fishing or swimming in
7 a marina setting.

8 MARK SANDERS: Why did you put that in,
9 by the way?

10 ERIK BUEHMANN: The reason was we didn't
11 want--we wanted to have some kind of, look at the
12 signage that you would put in before you put it
13 in. So we can tweak that to make that more clear,
14 but I didn't want to make it sound like we wanted
15 swimming or fishing.

16 MARK SANDERS: Yeah, because swimming's
17 never been in the permit. And all of a sudden,
18 that was a show stopper.

19 ERIK BUEHMANN: I looked at your
20 comments and I was, like, you know. So the reason
21 we had the rules and restrictions condition in
22 there is just because we didn't want--we wanted
23 to look at the signs before you put them up. So
24 that's something we can change and alter to make,
25 I think, a little bit better.

1 DOUG AIKINS: I'd like to pick up the
2 narrative with other big-picture item. We may be
3 running out of location space.

4 BRAD MCCREA: I just want to use that as
5 an example of, like, smaller thing I think we can
6 explain and wouldn't be an issue. But the big one
7 I have is the timing of the public access in
8 Phase 2 and 3, and then in Phase 1B. Is that a
9 different one than what you have, what you wanted
10 to talk to?

11 DOUG AIKINS: Yeah, go ahead if you
12 want.

13 ERIK BUEHMANN: Okay. What did you want
14 to talk about?

15 DOUG AIKINS: Well, it's an overview.
16 It's up a level of abstraction and it mostly
17 involves the enforcement issues. Putting on your
18 new guy hat again with me. You approach this, you
19 say, okay, here's a bunch of junk that's been
20 grafted into the permit--misunderstandings,
21 inaccurate language, inaccurate drawings. And we
22 have a current proposal to fix it all, clean it
23 all up.

24 And attached to historical
25 misunderstandings and accusations and allegations

1 and what have you, are a lot of things that are
2 attributable mainly to getting out of a phase in
3 time. In other words, the permit would require
4 you to do X; you didn't do X on time or you did
5 something else instead and X is still not done.
6 You know, so there's an allegation of an
7 enforcement problem.

8 ADRIENNE KLEIN: So you've read our
9 enforcement letters.

10 DOUG AIKINS: Yes.

11 ADRIENNE KLEIN: May 4th, September 1st.

12 DOUG AIKINS: Maybe not all of them. I
13 read the current ones.

14 ADRIENNE KLEIN: Plan review letters.

15 DOUG AIKINS: The situation, as I see
16 it, is you have because of the historical hoo-ha
17 over the substantive permit terms, that has
18 created a lot of enforcement allegations. And our
19 job on the substance of the permit is to clean it
20 up, make it capture the physical reality that
21 exists, the physical reality that's proposed to
22 be built, the phases in which it's proposed to be
23 built, and make it track with practical feasible
24 things. Like, you can't put public access on 6-
25 feet of drying mud until you do all the attendant

1 construction for that piece of real estate.

2 ADRIENNE KLEIN: Which is why we've
3 given Mark authorization --

4 DOUG AIKINS: I'm just using that as an
5 example.

6 ADRIENNE KLEIN:--and this amendment to
7 delay the access.

8 DOUG AIKINS: I'm using that as an
9 example. My point--and you make my point.

10 ADRIENNE KLEIN: Please don't call our
11 work hoo-ha.

12 DOUG AIKINS: It wasn't--just a code
13 phrase. I beg your pardon.

14 ADRIENNE KLEIN: We know which
15 allegations we've made, and I take personal
16 umbridge to some of the strong language that's
17 being used. So let's pick it out.

18 DOUG AIKINS: It's shorthand, forgive
19 me.

20 ADRIENNE KLEIN: Let's not use the
21 shorthand. It's not working in --

22 DOUG AIKINS: The history, the
23 complicated--I take your point. The complicated
24 history to date, however you summarize it, is
25 almost impenetrable. But I think the dynamic --

1 ADRIENNE KLEIN: It's very basic. We
2 need plan review and approval, and we need public
3 access--simple.

4 DOUG AIKINS: Yes, I got that.

5 ADRIENNE KLEIN: Thank you.

6 DOUG AIKINS: My point is simply that
7 the enforcement stuff --

8 BRAD MCCREA: Let's let Doug finish
9 this.

10 DOUG AIKINS: It's not--it is attendant
11 to the substantive permit obligations. It doesn't
12 have a life of its own. It describes reality
13 being out of phase with the permit language. And
14 if, in fact, we can fix the permit language and
15 make it modern, make it accurate, make it
16 feasible, and make it a permanent stable charter
17 for marina operations going forward, then there's
18 very little to be served by dwelling over past
19 temporary enforcement issues. No matter whether
20 they were accurate when made, no matter whether
21 they had a quick fix, no matter whether they can
22 be fixed now.

23 It may simply be that by amending the
24 permit language that conduct violated, you have
25 eliminated the violation. Now, suddenly, the

1 operations on the ground are fully consistent
2 with the new language. So what's the point of
3 maintaining an enforcement posture?

4 BRAD MCCREA: Do you want to stop there?

5 DOUG AIKINS: Sure, that's a question.

6 BRAD MCCREA: Okay. So we want to be
7 really clear and John's going to put a finer
8 point on this. That signing and executing a
9 permit amendment resolves the current violation,
10 but it doesn't sort of absolve--

11 DOUG AIKINS: That was in your letter. I
12 got that.

13 BRAD MCCREA:--[UNINTEL] from the past
14 discretions.

15 DOUG AIKINS: Interesting point, and I
16 take your point.

17 BRAD MCCREA: So, John, do you want to
18 say anything more about that? I think Doug
19 understand it.

20 JOHN BOWERS: Well, that's--what Brad
21 says is absolutely the case. There are two things
22 going on in any violation proceeding. One, the
23 first thing, is to cure the violation, to
24 eliminate the violation from whatever point that
25 elimination occurs going forward.

1 DOUG AIKINS: Understood.

2 JOHN BOWERS: And that can occur in a
3 whole variety of different ways. You can change
4 what's going on the ground.

5 DOUG AIKINS: Understood.

6 JOHN BOWERS: You can change the
7 language of the permit. That's mostly what we've
8 been talking about here. But none of that
9 eliminated the fact, or at least the perception
10 on our part, that there has been a violation that
11 has occurred in the past.

12 There are procedures for people in
13 Mark's position to take issue with the
14 appropriateness of any assessment of a civil fine
15 against him, and those procedures are going to be
16 available to you.

17 DOUG AIKINS: I have an alternative.

18 JOHN BOWERS: But we're not going to--I
19 can tell you, we're not going to simply sit here
20 and say, okay, Mark, you are hereby completely
21 exonerated from all liability for civil fines.
22 That's not going to happen.

23 DOUG AIKINS: Let me try something. You
24 may be absolutely correct it's not going to
25 happen. But it could if you wanted to make it

<p style="text-align: right;">Page 66</p> <p>1 happen and here's a thought. Again, new guy 2 complex. I see no reason going forward for a 3 hostile adverse regulatory relationship between 4 what is really--let's get hyperbolic--the jewel 5 of the South Bay. It's a public access amenity. 6 It's by far the best. It's practically the only 7 public access amenity for boating across the 8 shoreline in the South Bay. It's a good thing. 9 It will help--it will build Mark's 10 reputation as a fine marina builder. It will help 11 the BCDC's reputation as a sensitive regulator of 12 public access amenities. It could be a good thing 13 for all concerned if this thing got developed. It 14 was environmentally responsible, it was safe, it 15 was attractive and popular, economically viable, 16 et cetera. 17 There's no reason not to convert the 18 BCDC marina relationship into one of mutual 19 cooperation, rather than, you know, suspicion or 20 hostility or resentment, et cetera. 21 Going forward, if we were to say, okay, 22 we have--miraculously, it's early October. We've 23 just come up with a consensus change amendment to 24 the permit, Permit 5. We now have a permanent 25 charter for future operations.</p>	<p style="text-align: right;">Page 67</p> <p>1 Now we look back at this long history 2 of enforcement allegations, some of which were 3 very temporary, some of which were just simple 4 mistakes on either part. But it's a lot of 5 accretion--not hoo-ha, but it's an accreted 6 history that's problematic. And what is the 7 public interest, what is the institutional 8 interest in carrying that ball of stuff forward 9 to either your attention to be sorted out 10 laboriously or the Commission's attention to have 11 it sorted out before them. 12 The solution is--now, admitting that 13 administrative powers to simply forget about fees 14 and fines and things like that is limited. You do 15 have the administrative ability to say, upon our 16 review of the history, this allegation was made 17 in error. It was a simple error on XYZ's part, it 18 was a misunderstanding, it was a 19 misinterpretation or whatever. It had no basis at 20 the time it was made. We have administratively 21 determined that through our review of the history 22 involved. So that is something you can decide. 23 You can decide that it was an error when made. 24 That, and if you did that for whatever 25 remaining subset of enforcement allegations</p>
<p style="text-align: right;">Page 68</p> <p>1 remains after we change the language on which 100 2 percent of them were founded. Let's say that 3 changing the language takes care of 90 percent of 4 the allegations. That leaves 10 percent, whatever 5 they are, they have some enduring history, 6 there's some issues there. 7 If regarding those issues, you were to 8 say, well, it was valid in our view, but our view 9 is mistaken or you guys screwed up, but we're 10 willing to overlook it because of the 11 corresponding whatever, and administratively 12 determined that that remaining 10 percent subset 13 was not valid when made, then there's no need for 14 an appeal. There's no need for taking the whole 15 ball of wax to the Commission. And it goes away, 16 along with the substantive resolution of all the 17 policy problems. 18 So we emerge from this single set of 19 negotiations with two things accomplished. We 20 have fixed the permit; it's now a stable basis 21 going forward. We have erased the tortured past 22 of enforcement stuff. 23 MAUREEN SANDERS: And we won't spend 24 another two years, all of us -- 25 DOUG AIKINS: Reliving history.</p>	<p style="text-align: right;">Page 69</p> <p>1 MAUREEN SANDERS:--going through detail 2 after detail after detail. 3 DOUG AIKINS: It's within your powers, 4 and it would be a mutual victory. You would look 5 good; we would look good. The Commission would 6 not be bothered with tortious history. 7 JOHN BOWERS: We do all that. Everything 8 that you say, we do. Every time we issue a civil 9 fine assessment letter, we carefully--we 10 scrutinize every single allegation in those 11 letters to make sure that they are well founded, 12 both factually and legally. And we sometimes 13 jettison. We throw some allegations overboard. 14 You're absolutely correct, we do do that. And we 15 will follow that process in this situation. 16 What we are not willing to do at this 17 point in time, is to simply say nothing that has 18 happened in the past constitutes something that 19 we think there should be an assessment of a civil 20 fine. 21 ADRIENNE KLEIN: And we don't do -- 22 DOUG AIKINS: Well, I understand you 23 can't say that looking forward without having 24 looked at the facts involved. You can't just 25 categorically say we will. I understand that. But</p>

1 what I was saying is that it is within your power
2 that after you go through the process to do that.

3 JOHN BOWERS: We have prosecutorial
4 discretion.

5 DOUG AIKINS: That's what I'm saying.

6 JOHN BOWERS: Very broad.

7 DOUG AIKINS: That's what I'm saying.

8 MARK SANDERS: So can I ask a question
9 on the plan review. Everything we've built is in
10 this 26-page plan, which we presented to the DRB
11 three times. And, of course, the staff has 45
12 days to review and reject or comment. In no case,
13 has any drawing ever been submitted by us to the
14 BCDC staff--and there's probably been 20
15 submissions. In no case, have we ever got a
16 response in 45 days as required.

17 Nonetheless, I do have the letter from
18 Andrea Gaut, which says: "Thank you for the
19 package. You are authorized to proceed with
20 construction." Now what am I misunderstanding
21 about that?

22 BRAD MCCREA: I'm not exactly sure what
23 your question is.

24 ADRIENNE KLEIN: That would be --

25 MARK SANDERS: Andrea said, "Thank you

1 for the drawing package. We've reviewed it."

2 BRAD MCCREA: Oh, you're talking about
3 the plan review.

4 MARK SANDERS: The plan review.

5 ADRIENNE KLEIN: That was in the phase,
6 the initial phase, the excavation and surcharging
7 and all of that.

8 MARK SANDERS: No, no, that's the one
9 that Brad responded to. Andrea Gaut responded to
10 this drawing package, which I sent to her after
11 the DRB reviews when we changed the phases and
12 changed the locations of the buildings, and this
13 was the second part. This came out in 2005
14 actually.

15 BRAD MCCREA: Well, this will be part of
16 your appeal, right, presumably, right? I mean, do
17 you want to get into this now, or do you want to
18 stay on the amendment?

19 DOUG PIKINS: Yeah, we want to stay on
20 the amendments.

21 ADRIENNE KLEIN: But I think the plan be
22 in approval is a really key piece, so...

23 MARK SANDERS: So you're arguing --

24 BRAD MCCREA: Part of the case, but not
25 necessarily part of the amendment, right?

1 MARK SANDERS: You're actually saying
2 that I built it without plan reviews?

3 BRAD MCCREA: Now we're getting back
4 into allegations.

5 ERIK BUEHMANN: I think I understand
6 you're wanting to kind of get into the meat of
7 this right now.

8 MARK SANDERS: I have letters from the
9 DRB talking about it.

10 ERIK BUEHMANN: I understand that you
11 want to get into this now, but I think maybe we
12 should focus on the amendment and then we can
13 deal with the rest of it.

14 DOUG AIKINS: That makes sense to me. I
15 just want to make the point that these two halves
16 of this ball are connected. And there's the
17 permit, which, you know, is forward looking;
18 there's the enforcement, which is backward
19 looking. And to the degree that we can minimize
20 that, you know, go through the process, review
21 the enforcement allegations, see which ones of
22 them just die automatically by correction of the
23 permit language. And as to the remaining subset,
24 focus on them and do what we can.

25 My only purpose in making this now is

1 to think about the mutual benefits, both to the
2 Commission, you guys, and us of minimizing that.
3 I mean, the history has gone on long enough. It's
4 been contentious enough that the less we can
5 dwell on the enforcement issues, the better.

6 ERIK BUEHMANN: So I think, like, your
7 point is really good. I just have a question. If
8 we're going to go through this amendment process,
9 and what I think you're saying is what we've been
10 kind of wanting, which is like an amendment
11 where--an amendment and a permit that Mark can
12 sign. And then we deal with, you know, then,
13 hopefully, some of those enforcement allegations
14 go away. And then we deal with sort of, you know,
15 the remaining 10 percent or whatever. By my
16 question is then, like, what if those remain?

17 BRAD MCCREA: The 10 percent were his
18 words.

19 DOUG AIKINS: The remaining subset.

20 ERIK BUEHMANN: You know, just saying,
21 you know, like, but what if part of that, you
22 know, we can't just say this is an error, you
23 know?

24 DOUG AIKINS: Let's see if we get there.
25 It could be problem if we get there, but let's

1 see if we get there.

2 MARK SANDERS: So taking your--pardon me
3 for jumping in you guys. There's only one or two
4 other smallish items. In my mind, there were
5 three biggies. One was the guest dock thing--
6 guest versus courtesy dock. The second one was,
7 we corrected the language for phase 1, which
8 says, you know, you can't build where you can't
9 build, but it was left in place for phase 2 and
10 for phase 3. Now, we did talk about that during
11 amendment 3.

12 So to kind of show you what we're
13 thinking about next. Most likely, we would want
14 to build a restaurant first out there on the
15 point. Don't know if there's going to be a
16 boutique hotel or another coffee shop. And for
17 the restaurant, we will build at least a portion
18 of the boardwalk for that. And part of the deal
19 with the restaurant is you can sail in, like
20 Sam's and stuff like that.

21 But we won't be able to do all the
22 public access at the same time. That's why I
23 changed the language to say, to build the public
24 access, which I want, consistent with the
25 projects. Do what's practice and reasonable. So

1 as long as we capture that.

2 ERIK BUEHMANN: That's what I wanted to
3 talk about next because we kind of had questions
4 about that. Because it was new, at first, we
5 thought, you know, I knew you had some other
6 kinds of projects on the horizon. And we sort of
7 said, well, let's put that off for right now and
8 talk about it later. But maybe it's worth talking
9 about a little bit because we saw this new
10 language. Instead of prior to the use of any
11 structure, it says, as part of construction of
12 phase 2; and then at the bottom, you say, phase
13 in of these amenities will be specified at the
14 time the construction drawings are approved by
15 the Commission.

16 I thought that was an interesting
17 change. But, you know, we kind of had questions
18 about it, like, sort of how that can work? Is it
19 going to through plan review, you know?

20 MARK SANDERS: Yes.

21 ERIK BUEHMANN: Or is it going to, like-
22 -so maybe we want to tease that out a little
23 more. Because remember when we had our last
24 meeting, we had --

25 MARK SANDERS: I think you--the path. We

1 get the path. It's going to be displaced partly
2 by the boardwalk. But I think as long as the path
3 is 100 percent in, let's talk about phase 3,
4 which may happen before phase 2, by the way.

5 ERIK BUEHMANN: So you're saying, like,
6 you know --

7 MARK SANDERS: The path is going to be
8 there, but I can't put in the marina greens
9 because I don't know where the buildings are yet.

10 ERIK BUEHMANN: I see. Because this is
11 something like normally, you know, you could just
12 amend the permit when you knew exactly and we
13 would just change it in the permit itself. But
14 then if you wanted to do it, like, in a plan
15 review, it's unusual for us to do it like that,
16 you know. And so, we would want to figure out a
17 way--I don't know. Because, you know, like, when
18 we talked last time.

19 MARK SANDERS: When you see what I'm
20 trying to capture, though. So I only know how we
21 did it --

22 ERIK BUEHMANN: Because when we talked
23 last time--this is important--is that you--we
24 were concerned just as an agency about having--
25 not having, like, public access linked to an

1 amenity, right, or an improvement and development
2 that you're going to build, right. Because then
3 it could, you know, if we said you can build X
4 structure, you would just not--not you, but a
5 person could never provide the access.

6 So that's why we have prior to use of
7 any structure, you know, openness access prior to
8 use of any structure that you build, right. So
9 this is a change, and we want to make sure that
10 that kind of structure remains in place. Does
11 that make sense what I'm saying?

12 DOUG AIKINS: You're clearly wanting to
13 build in an enforcement mechanism, so you get the
14 public benefit before anything else can happen on
15 the private side. Isn't that adequately well
16 protected--this is a legitimate question--through
17 the plan review process?

18 When you and Redwood City--Redwood
19 City, let's say, goes through the construction
20 drawings and says, okay, go forth and build in
21 accordance with these drawings, and then they see
22 that it's all been built in accordance with the
23 drawings, including the public access paths, then
24 they sign off on the permits. And only when they
25 sign off on the permits can we occupy the

1 premises. Isn't that inherent structure an
2 adequate an enforcement mechanism?

3 JOHN BOWERS: I don't think our plan
4 review process operates in [UNINTEL]--

5 DOUG AIKINS: But Redwood City's does.

6 JOHN BOWERS: Pardon me?

7 DOUG AIKINS: Redwood City's does.

8 JOHN BOWERS: I know, but we have our
9 own system.

10 DOUG AIKINS: And if you either request
11 of them or we request on your behalf that they
12 copy you, give you a notice before --

13 ADRIENNE KLEIN: We have different
14 requirement than Redwood City.

15 DOUG AIKINS: Pardon?

16 ADRIENNE KLEIN: Our permit is different
17 than Redwood City.

18 DOUG AIKINS: But if Redwood City gives
19 the building permit and the grading permits for
20 these improvements.

21 MARK SANDERS: Come at it from a
22 different direction, you guys. Let's suppose the
23 last field dock got destroyed in South Bay about
24 eight months ago. There's no fuel left. It's a
25 huge problem for recreational boaters everywhere

1 because they've got to all the way up San
2 Francisco to get fuel, so it's become urgent. And
3 a fuel dock is a pain in the butt do to--it's
4 expensive and we don't make any money on it--but
5 it's urgent to put one in. But to put in a fuel
6 dock and say it's got to sit idle, as my
7 transient docks have for years, because I can't
8 build the overlooks for the launch ramp--I mean,
9 for the boatyard because the boatyard's not done
10 yet, so I don't know where the line. So you see
11 the problem is, it's--

12 ADRIENNE KLEIN: Do you want to move it
13 forward to an earlier phase, Mark? We'd be happy
14 to accommodate that.

15 MARK SANDERS: No, I'm just saying
16 let's--because I don't--remember how this
17 started. Agencies all said, conceive of anything
18 you might want to do out there and let's capture
19 it all now. So now we're going--but I don't know
20 what the boatyard looks like it can be split into
21 two outfits--one dealing with newer more exotic
22 boats, and one just "shave and a haircut" repairs
23 of old boats.

24 And so, the boatyard will be many small
25 businesses and it'll be a piece at a time. And

1 there's going to be a natural part of public
2 access. It's mostly the overlooks for the parts
3 that are on the water. But I can only build those
4 when I know where they're going to go. So there's
5 got to be some language that says we staff, we
6 recognize there's practical things you've got to
7 consider when you build something. We just can't
8 say, we want all public access before you know
9 where it's going to go.

10 And so, help me find a way to give me
11 flexibility to build it and build as much access
12 as I can when it's possible to do it. Just don't
13 ask me to do something impractical.

14 ADRIENNE KLEIN: It'd be real easy to
15 put it in the existing phase that's due now.

16 MARK SANDERS: If I knew, Adrienne, what
17 I'm going to do.

18 ADRIENNE KLEIN: Or sometime before
19 October, then you wouldn't have to build it, but
20 you'd be authorized to build it independent of
21 other access requirements. That's a really easy
22 solution.

23 ERIK BUEHMANN: I mean, we understand
24 your problem.

25 MARK SANDERS: You can see the problem,

1 yeah.

2 ERIK BUEHMANN: But one thing I just
3 want to emphasize for everyone and that's
4 something I kind of emphasize when we're
5 [UNINTEL], is that amendments are not something
6 to, like, shy away from. They're something to
7 embrace because you make the --

8 DOUG AIKINS: We're embracing.

9 ERIK BUEHMANN: Yeah, I know you're
10 embracing it now. But in the future, like, when
11 things change and you don't know what's going to
12 happen, that's when you have to amend it in the
13 permit. And sometimes, you know, it can't be done
14 through plan review or through, like, some kind
15 of authorization that's just sort of maybe a
16 portion of sometime--you know what I'm saying.

17 DOUG AIKINS: Well, if it's written in
18 that we must provide access period. I'll just say
19 that the permit condition stops there. And then
20 we go through the Redwood City design review
21 construction building permit occupancy permit
22 signoff, Redwood City won't sign off until
23 everything shown in the drawings has been built,
24 including the public access pathways. So if you
25 have a concern that it won't ever be built, that

1 will be taken care of when you review the plans
2 submitted to Redwood City, and you see that,
3 indeed, the pathways are proper. And you know it
4 has to be built before Redwood City will sign off
5 and let us occupy anything in that phase,
6 anything under that permit. So both those
7 concerns --

8 ADRIENNE KLEIN: We can't concede our
9 permit review of the plan review process to
10 Redwood City.

11 DOUG AIKINS: You're not conceding it.
12 All you're saying is that that's your enforcement
13 mechanism.

14 ADRIENNE KLEIN: Well, we're not going
15 to, we're not going to.

16 DOUG AIKINS: You're not conceding it.
17 All you're saying is that that's your enforcement
18 mechanism.

19 ADRIENNE KLEIN: We're not going to--we
20 want--we would like Mark to provide us with
21 plans, not the DRB plans but plans for the
22 respective phases showing the improvements.

23 DOUG AIKINS: We can do that.

24 ADRIENNE KLEIN: Mark has mentioned that
25 the project is evolving. That is a reason to, you

1 know, just the DRB plans are not construction
2 plans.

3 DOUG AIKINS: Okay.

4 ADRIENNE KLEIN: Nobody's going to build
5 in this marina without construction plans. Those
6 construction plans need to show certain things
7 for the BCDC permit that the Redwood City permit
8 doesn't require.

9 DOUG AIKINS: Problem solved.

10 ADRIENNE KLEIN: It's fine if those
11 details are shown on the same set of plans given
12 to the city.

13 DOUG AIKINS: Right.

14 ADRIENNE KLEIN: Oftentimes, rarely, I
15 think--I don't--I think that happens rarely. I
16 think that generally, a couple extra sheets were
17 made to accommodate the [UNINTEL] public access
18 requirements, and so those need to be directly
19 submitted to us for direct review and approval by
20 our bay design analysts and engineer.

21 DOUG AIKINS: No problem with that
22 whatsoever.

23 ADRIENNE KLEIN: We're waiting for quite
24 a few of those plans. We've been in negotiation
25 for quite a while and we've done--

1 DOUG AIKINS: Plans for what?

2 ADRIENNE KLEIN: For the built access
3 and the--so signage, quite a few signage
4 requirements and other things.

5 ERIK BUEHMANN: Let's focus on this for
6 right now.

7 ADRIENNE KLEIN: Well, yeah, because it
8 came up, I wanted to mention it.

9 DOUG AIKINS: Okay, but I'm talking
10 about the process and your concern that it won't
11 ever be built. I mean, first of all, you have a
12 substantive concern for what's built.

13 ADRIENNE KLEIN: No, not that it won't
14 ever be built.

15 DOUG AIKINS: You have two concerns.

16 ADRIENNE KLEIN: It was that we have a
17 separate plan review process that we'd like to
18 retain.

19 DOUG AIKINS: Understood, so what's
20 built is of concern.

21 ADRIENNE KLEIN: I appreciate your
22 suggestion, but we're not.

23 DOUG AIKINS: So what's built is of
24 concern, and you want to review the plans when
25 they're submitted to Redwood City to make sure

1 you like them. And secondly, you want to make
2 sure that it is built that way.

3 ADRIENNE KLEIN: Correct.

4 DOUG AIKINS: Okay, as to the latter
5 concern, it seems that it's perfectly legitimate
6 and safe to trust Redwood City not to sign off
7 until it's all built, so the it won't get built
8 concern is taken care of.

9 BRAD MCCREA: What if they sign off
10 before it's all built?

11 DOUG AIKINS: They can't.

12 BRAD MCCREA: Maybe they will. They have
13 discretion, don't they?

14 DOUG AIKINS: Let me go back to the--
15 you're raising the other concern, which is we
16 want to approve what will be built. So we submit
17 plans simultaneously to Redwood City and you. You
18 review them independently. We reconcile the
19 different points of view. We come up with
20 something that's going to be built. Redwood City
21 allows it--obviously with your input, Redwood
22 City allows the composite of your two
23 perspectives. We start building. We stop
24 building, and only when it's all built will
25 Redwood City sign off and allow us to occupy

1 anything--improvements in that area. That's the
2 occupancy permit process, the sign-off on the
3 building permit. That guarantees it has to be
4 finished before we can occupy it, so it will--

5 BRAD MCCREA: But see, I could see a
6 scenario--I mean, couldn't you--we're not going
7 to do this, so this is kind of--we're expending
8 hot air. We're not going to cede enforcement
9 authority over to the local government.

10 DOUG AIKINS: How about if you used the
11 word delegate?

12 BRAD MCCREA: Yeah, we're not going to
13 delegate--

14 DOUG AIKINS: Well, but you guys--you
15 still have independent--enforcement authority.

16 MARK SANDERS: The city's process is
17 very--I mean, inspections every week by four
18 departments, I mean, it's very rigorous. So, and
19 the BCDC process I went through for the building
20 was they looked at the colors, they looked at the
21 kinds of windows, and they argued about the roof
22 type. I mean, it was like trivial.

23 BRAD MCCRAE: The way that--

24 MARK SANDERS: So it was not--

25 BRAD MCCRAE: The way that every

1 developer around 1,000 miles of shoreline has
2 been doing it for the last 48 years is they get
3 their permit from us, they get their permit from
4 the local government, they build it, and they
5 build it according to both permits, and I don't
6 understand why you need the local government to
7 be the enforcement mechanism.

8 DOUG AIKINS: No, what I'm trying to
9 cure is the problem where you have a separate
10 call it condition subsequent, and that is unless
11 you build all this stuff in the sequence that we
12 decree, then you can't do something else. In
13 other words, it's a built-in enforcement
14 mechanism right into the permit.

15 Now, understand--we understand that you
16 have independent enforcement authority. If you
17 see something built out there that violates the
18 permit, you can get an injunction or do something
19 else, write us a nasty letter, whatever it takes.
20 You have independent enforcement authority that's
21 never delegated or conceded.

22 ERICK BUEHMANN: So what you're saying
23 is sort of like this.

24 DOUG AIKINS: It's administrative; it's
25 sharing authority.

1 ERICK BUEHMANN: You submit plan review
2 documents for what you're going to build. Then
3 you have to have local discretionary approval in
4 order to use the--

5 MAN: It's not a discussion, it's just a
6 building permit.

7 ERICK BUEHMANN: Yeah, or a building
8 permit, an administrative permit to--

9 MARK SANDERS: It's the identical
10 submission.

11 ERICK BUEHMANN: Yeah, so prior to the
12 use, or, I don't know, prior to--

13 DOUG AIKINS: It's unavoidable and it's
14 automatic.

15 BRAD MCCREA: So you guys--let's talk
16 about this area over here, right? So you're
17 saying you might build something out here first.

18 MARK SANDERS: Yeah, what I had
19 envisioned, Brad, was--

20 BRAD MCCREA: Hang on, let me just
21 finish my questions.

22 MARK SANDERS: Okay.

23 BRAD MCCREA: And the permit requires
24 that prior to the use of any structure in phase
25 three--this is all phase three?

1 MARK SANDERS: Uh-huh.

2 BRAD MCCREA: That the public access
3 associated with that be built, which is the
4 boardwalk, right?

5 MARK SANDERS: No, no, no. that's the
6 problem, Brad. If it was just the boardwalk, that
7 would be relatively handleable. But remember, you
8 guys came back and basically, everything that
9 wasn't a building became dedicated public access,
10 so all the landscaping around all the buildings,
11 the marina greens, all the public access around
12 the buildings has to be done before we have--see,
13 if I was going to design--

14 ADRIENNE KLEIN: For what's built.

15 MARK SANDERS: Huh?

16 ADRIENNE KLEIN: For what's built.

17 MARK SANDERS: That's what the permit
18 originally said, and that's what the DRB said.
19 They said the public access associated with this
20 part of the development, which made sense. It
21 wasn't until later that somebody said oh, no, we
22 did it a different way. We want all public access
23 before you put the first boat in the water, which
24 we've--that's what tipped everything upside-down.

25 ADRIENNE KLEIN: All phase one public

1 access.

2 JOHN BOWERS: We have--we divided up
3 here various public access requirements into
4 these different phases.

5 BRAD MCCRAE: Yeah, but he's saying the
6 several phases.

7 MARK SANDERS: But it's only for the
8 paths, John. That's the problem. You're thinking
9 the paths, which that's history. That's no
10 problem. There's lots more public access. There's
11 planting areas, there's the marina green areas,
12 there's additional pathways, there's building
13 set-asides.

14 BRAD MCCREA: If you look at this
15 exhibit, which is Exhibit A, which shows the
16 dedicated public access areas, there's these
17 large green areas in between these building
18 paths. And so--

19 ADRIENNE KLEIN: Yeah, I'm hearing--may
20 I?

21 BRAD MCCREA: Yeah.

22 ADRIENNE KLEIN: Well, I'm hearing Mark
23 interpret--I'm looking at the condition, and yes,
24 the 800-foot, 50-long boardwalk should be built
25 when you--built and available when you start on

1 the first building envelope. Do you interpret it
2 that way?

3 ERIK BUEHMANN: No, it's prior to
4 occupancy of the first structure, right?

5 ADRIENNE KLEIN: Prior to the use of any
6 structure authorized herein, and here--for
7 boardwalk, boardwalk. But then it says at least
8 10 percent of the building envelope shall have
9 retail areas and appropriate public access
10 amenities and site furnishings, as outlined in
11 another condition. And so, I would only interpret
12 that, Mark, to apply to the building--you know,
13 the first of the four building envelopes. Are you
14 interpreting it to mean that all of the public--

15 MARK SANDERS: Yes, because--

16 ADRIENNE KLEIN: So we can--you know, we
17 can clarify that with a "respectively" or
18 something.

19 BRAD MCCREA: What about these? I'm
20 looking at a public access diagram that has a
21 blob here, a blob in there, and a line there.
22 Does all of this have to be built prior to the
23 use--

24 ADRIENNE KLEIN: Mark is reading the
25 permit that way, and I think that that's a fair

1 interpretation of the permit.

2 MARK SANDERS: No, don't say that,
3 Adrienne; it's the opposite. I went back--the
4 language presented to the DRB for Amendment 3,
5 which talked about phasing, stated and had a
6 drawing showing what public access would be built
7 with those phases. Now, that was not captured in
8 the permit when it came out some weeks later, but
9 it was what was agreed to by the DRB. And so now,
10 I'm in the position of people saying well, those
11 paths weren't there, and I said well, they were
12 never supposed to be there. The DRB understood we
13 were mucking mud. mud. Krikin said that. He says
14 "of course you couldn't build paths there until
15 the land is ready."

16 So my fear is somebody's going to come
17 along and say well, you haven't built the marina
18 greens around the future rowing center and the
19 future coffee shop, and I say well, we may not
20 even have one, but I don't know where they're
21 going to be located. I can only build the public
22 access attached to a building when I have the
23 building.

24 JOHN BOWERS: We can massage this permit
25 condition language any way that is mutually

1 satisfactory to us. What we can't do is what I
2 see you're trying to do here, is to give you the
3 final discretion as to when this stuff is built.

4 MARK SANDERS: No, that's why I said--
5 because I've got to come back to basically you
6 and the city with my drawings and say here's the
7 restaurant and here's the first boatyard
8 building, and here's the public access that I can
9 practically build around it. And you may say
10 well, could you go out here a little bit more;
11 can you go out there? Now remember, the paths are
12 already all in, so it's going to be overlook--

13 JOHN BOWERS: We're not talking about
14 plan review here. We're actually talking about
15 actual physical construction of these access
16 areas.

17 ERIK BUEHMANN: Mark's talking about,
18 like, a concept of adjacency. He's basically
19 saying as he builds, project by project, he wants
20 to build the public access associated with each
21 of those projects incrementally.

22 MARK SANDERS: Exactly.

23 BRAD MCCREA: That's fine. We could
24 write a permit condition.

25 ADRIENNE KLEIN: Right, that's what I

1 was saying.

2 BRAD MCCREA: But what we can't do,
3 Mark, is have a negotiation when you come in for
4 a development. You can't say well, can you go out
5 a little further here? There has to be some
6 expectations about what it--

7 MARK SANDERS: Oh no, you guys, I have
8 built everything I can build. In fact, the paths
9 that we've been arguing about, I mean, they're
10 almost complete already, by the way. But I can't--
11 what kills me is when I, for three years that
12 you failed to do this, and I show you pictures of
13 why it's physically impossible, the letters from
14 the city saying you're forbidden to do it, and
15 you're saying you're violating your permit. How
16 do I deal with that?

17 BRAD MCCREA: Well, I tell you--

18 MARK SANDERS: We've got to be
19 practical.

20 ADRIENNE KLEIN: Come in for an
21 amendment in advance of the permit expiring, in
22 advance of--

23 MARK SANDERS: But, Andrea, the
24 amendment three was specifically for that.

25 DOUG AIKINS: We're doing it now.

1 ADRIENNE KLEIN: Well, I guess Mark is
2 asking how to avoid that, and I'm speaking toward
3 the future--

4 DOUG AIKINS: And I'm marrying your two
5 comments.

6 ADRIENNE KLEIN: --giving an example
7 from the past that when Mark knew that this, you
8 know, I think this is the east side of the marina
9 wasn't going to be ready for him to continue, for
10 you to continue a public access path, you know,
11 the requirement was originally that all of this
12 be provided prior to occupancy. But instead, half
13 of it was partially built, though not signed as
14 available, so we are now willing to amend the
15 permit to extend the due date from prior to
16 occupancy of the marina slips to a date certain.
17 So that's how you address changes like that on
18 physicalities.

19 DOUG AIKINS: Let me pick up on a
20 comment you made a minute ago, the issue of when
21 it's built. I think there are two answers, to
22 categorical answers to when it's built. The issue
23 of in what year is solely up to Mark. You know,
24 he defines the project, he implements the
25 project, he builds it according to market forces,

1 and the project gets built, but it's his calendar
2 schedule. When it gets built in relationship to
3 its surroundings is something we can talk about,
4 too--we've been talking about it--and that is the
5 point you made, adjacency. It really makes no
6 sense to say put a complete access system in
7 place in certain discrete locations before you
8 know what's adjacent to it, before you know where
9 the buildings are, how big they are, where fences
10 are, temporary and permanent fences. That's an
11 unreasonable condition. But if you have, built
12 into the permit--

13 BRAD MCCREA: Not in all cases. I mean,
14 that's a--

15 DOUG AIKINS: That's a generality, of
16 course.

17 BRAD MCCREA: There's plenty of
18 developments, master--

19 MARK SANDERS: Strip malls would be--
20 yeah. Strip malls you can build it all at once.

21 BRAD MCCREA: No, not strip malls. I
22 mean, look at other master developments. People
23 have a very clear sense of what the plan is. Mark
24 is different because he doesn't have a clear
25 sense of it.

1 DOUG AIKINS: And we're using Mark's
2 example. My point is that the concern that public
3 access will never be built is adequately
4 addressed by the concept of design--building
5 permit design review. You know, when the
6 substance of the new phase to be built comes to
7 you for review, you give your substantive input,
8 you're happy with the design. We run around and
9 get permits from Redwood City, we build it. We
10 can't occupy anything under that permit until the
11 access improvements are installed, and that is an
12 adequate guarantee of completion. So the time of
13 when it's built is always attendant to its
14 surrounding adjacent improvements. And then the
15 other issue of when it's built is when the
16 market's ready, when Mark's ready to build it.
17 But this additional condition of you have to put
18 in a complete access system before any of the
19 improvements can be used is unnecessary. It's
20 bureaucratic overkill. It doesn't do any good. It
21 doesn't accomplish any better the purpose of
22 guaranteeing that it will be completed than the
23 building permit process does.

24 MARK SANDERS: And it's impossible,
25 because where do you put the overlooks for the

1 straddle lift for the boatyard before you design
2 the boatyard? You can't. You simply can't do it.

3 DOUG AIKINS: It's an example of the
4 kind of suspicion that's unnecessary.

5 BRAD MCCREA: It's a what?

6 DOUG AIKINS: It's an example of the
7 sort of suspicion, the sort of jaundiced view
8 that you'll never complete your permit
9 obligations in time or in the right sequence.

10 ADRIENNE KLEIN: Well, it's just
11 standard practice here. It's not personal.

12 DOUG AIKINS: Well I know, but what I'm
13 trying to say is that the only thing that
14 justifies it--well, put it this way. There's no
15 objective justification.

16 MARK SANDERS: It is--point out--I mean,
17 BCDC has never approved a full-service marina
18 before. You've done little pieces, a new boatyard
19 here. A boatyard especially is a collection of
20 maybe 20 or 30 small businesses, and they come
21 and go. You don't know. Like I said, it looks
22 like our boatyard will be two small boatyards
23 servicing two different kinds of boats, and they
24 will come in at different times. I've got one
25 that's going to do--go I think, and I've got one

1 that I don't think I'm ever going to find. But I
2 do know it's pretty urgent for boaters to get a
3 fuel dock in. I don't want to do it, but I'm
4 going to have to do it.

5 And so, recognizing the reality of
6 that, there's got to be language that protects
7 what you want. You want to say well, we want to
8 make sure as soon as you can build this, it's
9 built. But don't hogtie me by putting an
10 artificial and unattainable hurdle in front of
11 me. It's just--

12 BRAD MCCREA: So I have to say that one
13 of the things that gets our goat--that's the
14 term--is that people can't walk from here to
15 here, right, today. They can't do this, and that
16 was required a long time ago.

17 MARK SANDERS: I don't control that
18 peninsula. Pacific Shores does, and you have the
19 letter from them saying as of now, you are not
20 allowed to open it up.

21 BRAD MCCREA: You put the fence up,
22 right?

23 MARK SANDERS: It's on their property.
24 The signs are on their property, Brad.

25 BRAD MCCREA: Oh, they put the fence up?

1 MARK SANDERS: They--I put the fence up
2 for moyer, who asked me to rein--because it was
3 sinking. We were about to have seawater coming
4 in.

5 BRAD MCCREA: So you put the fence up on
6 their property.

7 MARK SANDERS: I put the fence on their
8 property, just like I put the landscaping on
9 their property at the entrance in accordance for
10 their landscaping requirements.

11 BRAD MCCREA: Why don't they want the
12 fence there--why do they want the fence there?

13 MARK SANDERS: They--I had to pay. I
14 paid \$75,000 for the right to get access across
15 that peninsula and the road entrance, and there
16 was--so I do have that, and it's an amendment--an
17 easement which I own. But the easement says when
18 it is safe to do so, and they, just like Redwood
19 City, say while you are in construction, we do
20 not want our tenants walking out there along what
21 they consider an unsafe area.

22 BRAD MCCREA: And why haven't you built
23 it yet?

24 MARK SANDERS: Because they won't allow
25 me to. The 25 feet is on their property; it's not

1 on mine.

2 BRAD MCCREA: They won't allow it. They
3 say you can't open it until it's safe, but they
4 won't allow you to build it.

5 MARK SANDERS: They won't allow--first
6 of all, their path ends about 25 feet before the
7 end of their property. My property line's not on
8 the road, it's on the--what's called the Cargill
9 ditch, 25 feet in. so there's 25 feet of--

10 BRAD MCCREA: Mark, do you think there's
11 ever a time when you'll open that path?

12 MARK SANDERS: I thought we'd be open by
13 now, which is why I built the rest of the
14 fricking road.

15 BRAD MCCREA: That's not what I asked. I
16 asked do you think you'll ever open that path?

17 MARK SANDERS: Of course I will.

18 BRAD MCCREA: When? Exactly when?

19 MARK SANDERS: Well, A, when I'm
20 permitted. I've been stopped--

21 BRAD MCCREA: I want to know when you're
22 going to open this.

23 MARK SANDERS: My project--

24 BRAD MCCREA: Because we're going to
25 require you in this permit to open it, and if you

1 don't open it by the time the permit requires it,
2 you're going to be in a heap of trouble.

3 MARK SANDERS: Okay, so let me stop you.

4 BRAD MCCREA: Doug, is that there? You
5 got that, right?

6 MARK SANDERS: Yes, so you say I must
7 violate my contract. You have a contract with
8 Pacific Shore Center, too. I have a copy of their
9 permit, and they are blocking me now, and I
10 can't--they sent a letter to you saying until
11 this and this and this is done, we will not allow
12 Mr. Sanders to connect on our property.

13 BRAD MCCREA: And what is the this and
14 this and this?

15 MARK SANDERS: Safety. Redwood City sent
16 you photographs, all--

17 BRAD MCCREA: So how are they going to
18 solve the safety problem?

19 MARK SANDERS: The same way Redwood City
20 did. Redwood City said we will allow Sanders to
21 open this up. You know I am under orders by
22 Redwood City to keep it closed. You know that.

23 BRAD MCCREA: You've told us that.

24 MARK SANDERS: No, you have two letters
25 from Redwood City, both say--I gave you a copy of

1 one today.

2 ERIK BUEHMANN: Yeah.

3 MARK SANDERS: Redwood City says we
4 absolutely forbid Mr. Sanders to open this until
5 we deem it safe, and while it's in construction,
6 at the time the allegation was made, there were
7 six-foot deep trenches.

8 BRAD MCCREA: So how are we going to
9 solve this problem?

10 MARK SANDERS: Fencing. That's why the
11 whole thing was about construction fencing.

12 BRAD MCCREA: How are we going to solve
13 this problem and opening public access?

14 MARK SANDERS: This is the letter from
15 Redwood City to you.

16 BRAD MCCREA: How are we going to solve
17 the problem of opening the public access? You
18 saying there's a problem, we can't open the
19 public access until it's safe on the Pacific
20 Shores side.

21 MARK SANDERS: No, I'm saying I have to
22 have two things, the okay from Redwood City and
23 the okay from Pacific Shores. Now, I could open
24 my path right up to my property line, but Pacific
25 Shores has 25 feet to complete, and they're

1 saying we won't complete until we deem it safe.
2 And they sent you a letter saying that, so it's
3 out of Sanders' control. The city said we're
4 going to control this for safety reasons, and
5 Pacific Shores. And what they've said is in
6 between, now that I've got all the underground
7 work done, they said if you fence off the
8 construction area and just limit people to the
9 path, it'll be safe enough. And that's what Kevin
10 Stevens worked on for a year, until he finally
11 gave up in disgust.

12 DOUG AIKINS: Brad, and until there are
13 buildings built there and there's something to
14 access, it's a mud flat. It's pointless to
15 require public access across a barren moonscape
16 right there.

17 BRAD MCCRAE: Yeah, I'm familiar with
18 it. This is the area where Mark came out and--

19 ADRIENNE KLEIN: Ellen and I had an
20 excellent working relationship with Kevin.

21 MARK SANDERS: Well, I talked to Kevin,
22 and he was--

23 ADRIENNE KLEIN: We made a lot of
24 progress. We were sorry to see him go.

25 WOMAN: Yeah, we were, too.

1 BRAD MCCRAE: So are you saying--

2 MARK SANDERS: What I said was true. He
3 was--

4 BRAD MCCRAE: --that this isn't--the
5 discussion shouldn't be with you and BCDC; the
6 discussion should be with Pacific Shores and
7 BCDC?

8 MARK SANDERS: I think the discussion
9 should be with Redwood City. Redwood City said--
10 first, BCDC said we find no evidence that Redwood
11 City restricted it, so Redwood City, four
12 department heads sent you letters. We have
13 restricted this area. We've sent you photographs.
14 This was the first letter, and then they sent a
15 second package saying we absolutely forbid access
16 to this area while it's in construction. However,
17 they did agree if we fence it so people are
18 restricted to the path, so it's safe, they can
19 open it. I believe when Redwood City says it's
20 safe, Pacific Shores will be okay.

21 ERIK BUEHMANN: I thought you had
22 already fenced that off, that area with the--

23 MARK SANDERS: No, we had a fence design
24 which Ellen approved, but until--I'm still on a
25 hold. I've been on hold for two years. I can't

<p style="text-align: right;">Page 106</p> <p>1 pull weeds, so I can't build a thing.</p> <p>2 ADRIENNE KLEIN: If a permanent</p> <p>3 amendment authorizes the fence, I'm frankly</p> <p>4 willing to let the fence be constructed without a</p> <p>5 permit, because I don't see the permit getting</p> <p>6 authorized anytime soon, so that we can get</p> <p>7 access to half the site.</p> <p>8 MARK SANDERS: But the city has</p> <p>9 repeatedly told you guys, it's not Sanders, it's</p> <p>10 us.</p> <p>11 ADRIENNE KLEIN: But we still don't have</p> <p>12 approved signage plans, which is part and parcel</p> <p>13 of the access being--</p> <p>14 MARK SANDERS: What approved signage</p> <p>15 plans?</p> <p>16 ADRIENNE KLEIN: Well, there's</p> <p>17 communication between Ellen and your</p> <p>18 representatives about that that I think--</p> <p>19 MARK SANDERS: Yeah, but he said the</p> <p>20 last thing with him was he said he made like 11</p> <p>21 calls, multiple emails, and he just said I'm</p> <p>22 done. There was no response.</p> <p>23 BRAD MCCRAE: So what I hear you saying</p> <p>24 is you're going to do everything you can to</p> <p>25 provide access at the dividing line.</p>	<p style="text-align: right;">Page 107</p> <p>1 MARK SANDERS: Brad, that's what I've</p> <p>2 always wanted, but it's got to be safe. And so</p> <p>3 when--</p> <p>4 BRAD MCCRAE: You have control over</p> <p>5 making it safe.</p> <p>6 MARK SANDERS: I have the ability to</p> <p>7 make it safe now. When it was 20 feet deep of bay</p> <p>8 mud, saturated bay mud, it's not safe.</p> <p>9 BRAD MCCRAE: Yeah, but it hasn't been</p> <p>10 like that for a while.</p> <p>11 MARK SANDERS: It was exactly that way</p> <p>12 when the allegation was made.</p> <p>13 BRAD MCCRAE: Which was what year?</p> <p>14 MARK SANDERS: This was two and a half</p> <p>15 years ago. I have photographs of it.</p> <p>16 BRAD MCCRAE: So it was unsafe two and a</p> <p>17 half years ago.</p> <p>18 MARK SANDERS: But you still made the</p> <p>19 allegation.</p> <p>20 BRAD MCCRAE: Yes, we did.</p> <p>21 JOHN BOWERS: Because the permit didn't</p> <p>22 reflect that.</p> <p>23 MARK SANDERS: But it did.</p> <p>24 JOHN BOWERS: The way you correct that</p> <p>25 is to get in front of us with a permit amendment</p>
<p style="text-align: right;">Page 108</p> <p>1 that modifies the permit to say what you want it</p> <p>2 to say in terms of your obligation--</p> <p>3 MARK SANDERS: John, that's what</p> <p>4 Amendment 3 was, and I have the Amendment 3</p> <p>5 documentation. The fact that the permit was not</p> <p>6 written correctly because Andrea Gaut was</p> <p>7 pregnant and had to leave, and she left it</p> <p>8 incorrect in two or three places. That was the</p> <p>9 whole point of Amendment 3 was we had to break it</p> <p>10 down in phases because we had bay mud that had to</p> <p>11 dry for the next three years. That was what we</p> <p>12 did, and I have absolute--I have all the packages</p> <p>13 and all the new drawings, none of which got into</p> <p>14 the permit. Not one. The permit still has the</p> <p>15 same old 2003 out-of-date drawings.</p> <p>16 BRAD MCCRAE: So are you--I'm still</p> <p>17 unclear. Are you okay with the dates that are in</p> <p>18 the permit now that say you'll get this path open</p> <p>19 to the Pacific Shores--</p> <p>20 MARK SANDERS: What I said in my--what I</p> <p>21 put in my permit amendment, because this has been</p> <p>22 dragged on so long, I need two months after the</p> <p>23 permit is approved. That's a reasonable time.</p> <p>24 BRAD MCCRAE: Are we okay with that?</p> <p>25 ERIK BUEHMANN: The rest of it is</p>	<p style="text-align: right;">Page 109</p> <p>1 September 30th is what it says here. You didn't</p> <p>2 change that, so I was kind of--</p> <p>3 MARK SANDERS: The rest of what?</p> <p>4 ERIK BUEHMANN: If you look at Phase 1B</p> <p>5 and Page 10, that's for, like, you know--</p> <p>6 MARK SANDERS: Page 10?</p> <p>7 ERIK BUEHMANN: --the walkway and the--</p> <p>8 DOUG AIKINS: Page 10 of our corrected</p> <p>9 permit?</p> <p>10 ERIK BUEHMANN: Yeah, we need a date</p> <p>11 certain.</p> <p>12 MARK SANDERS: The signs, that's--the</p> <p>13 pavers are already done.</p> <p>14 MAN: Yeah, that's--</p> <p>15 MARK SANDERS: The guest berths are</p> <p>16 already done.</p> <p>17 ERIK BUEHMANN: [UNINTEL] why you didn't</p> <p>18 change that [UNINTEL].</p> <p>19 MARK SANDERS: Yeah, it's already done.</p> <p>20 It's all done.</p> <p>21 [CROSSTALK]</p> <p>22 DOUG AIKINS: Could you repeat that,</p> <p>23 please?</p> <p>24 ERIK BUEHMANN: We're trying to figure</p> <p>25 out whether two months after the date of</p>

1 execution is an acceptable revision.

2 MARK SANDERS: Oh, you think it should
3 be done faster, or could be?

4 ERIK BUEHMANN: No, I--what's that?

5 MARK SANDERS: You think it's possible
6 to do it faster than that?

7 JOHN BOWERS: No, that wasn't our
8 discussion. Our discussion was whether we needed
9 a date certain--although that is a date certain.

10 ERIK BUEHMANN: Because that's what we
11 had placed in there.

12 BRAD MCCRAE: And so, I--you know, I
13 think that that--I think it is a date certain. If
14 you execute it on such-and-such date, 60-
15 something days later, it's done.

16 DOUG AIKINS: And conceptually speaking,
17 we're prepared to execute this, our proposed
18 amendment on--with the redlines.

19 BRAD MCCRAE: Yeah.

20 DOUG AIKINS: With the tweak we talked
21 about and tweaks that we--

22 BRAD MCCRAE: Sorry to be so cynical,
23 but I've heard that before.

24 DOUG AIKINS: Would it help if we gave
25 you a signed one?

1 BRAD MCCRAE: A what?

2 DOUG AIKINS: A signed permit amendment?

3 BRAD MCCRAE: I don't think we want them
4 to sign this yet.

5 DOUG AIKINS: A lot of public
6 jurisdictions require that the applicants sign
7 off on the approval conditions before they even
8 consider it. It's an option.

9 JOHN BOWERS: Yeah, we got your letter.
10 I mean, you know, you're Mark's legal
11 representative, and you said this is what Mark is
12 willing to sign. We accept that.

13 MARK SANDERS: Well, and also--

14 DOUG AIKINS: So the notion of delay is
15 specious. We have no intention of delay.

16 ERIK BUEHMANN: Can I make a suggestion?
17 You had suggested changing some of the language
18 about the transient docks and you know, the whole
19 dock, you know, like the whole dock issue. Maybe
20 if you could make some changes to the sort of
21 phasing language that you're talking--that we had
22 talked about a little bit earlier about, you
23 know, that you had kind of a post-plan review.
24 Now, I don't know if that's acceptable to us, but
25 we would like maybe to see that hashed out a

1 little more. Is that--

2 DOUG AIKINS: Okay.

3 ERIK BUEHMANN: --in a little more
4 detail and how that would work, and now that you
5 understand sort of our concerns about that.

6 DOUG AIKINS: Sure, sure.

7 JOHN BOWERS: I'm looking at Page 13,
8 and I could tell you right now that what you have
9 is not acceptable. You know, eliminating a timing
10 condition that is geared to some physical
11 development on the ground and replacing that with
12 a vague reference to the phase three construction
13 process--

14 ERIK BUEHMANN: All right, let's--

15 DOUG AIKINS: We're lost.

16 JOHN BOWERS: Phase 3. You have a
17 different--you have Page 12, John. Page 12.

18 ERIK BUEHMANN: He's talking about the
19 language that we were just talking about.

20 JOHN BOWERS: I mean, that's not going
21 to fly. We need--

22 DOUG AIKINS: I'm sorry, John, we're
23 fumbling--

24 MARK SANDERS: What part doesn't make
25 sense to you?

1 JOHN BOWERS: On Page 12, Page 3, you
2 eliminated the reference to prior to the use of
3 any structure authorized herein under phase
4 three, and you replaced it with a vague reference
5 to the phase three construction process.

6 DOUG AIKINS: And that's what I was
7 just--

8 ERIK BUEHMANN: That's what he's talking
9 about, and we're--we're agreeable to doing that.

10 MARK SANDERS: We're trying to find a
11 way that is--

12 JOHN BOWERS: And maybe what you want to
13 do is put in more benchmarks, so that every
14 little square inch of public access is related to
15 a specific physical development, like the
16 adjacent structure, or something like that.

17 [CROSSTALK]

18 JOHN BOWERS: Well, I don't know.

19 MARK SANDERS: If we don't know what
20 it's going to look like--

21 ERIK BUEHMANN: I get your concept.

22 JOHN BOWERS: If the broad reference to
23 the occupancy or the putting into use of any
24 structure in phase three gives you heartburn
25 because it's too broad, then maybe we need to

<p style="text-align: right;">Page 114</p> <p>1 break it down and make it more specific. 2 DOUG AIKINS: I understand. 3 JOHN BOWERS: That's all. 4 MARK SANDERS: The heartburn is only if 5 I can't do it, if it's something I can't do. 6 ERIK BUEHMANN: We totally understand 7 your points. 8 MARK SANDERS: I know, but-- 9 BRAD MCCREA: So can we agree that--and 10 this is a question for everyone in the room, and 11 I'm just brainstorming, but could we agree that 12 the boardwalk--because you're going to have the 13 temporary trail in soon, right? There's a 14 mechanism in this permit, and I'm looking at 15 Erik-- 16 ERIK BUEHMANN: It says by September 17 30th, and he was just saying-- 18 BRAD MCCREA: Right, so I'm going to 19 have the ability for the public to walk along 20 this shoreline will always be there, and we 21 probably should have some interim or temporary 22 construction trail language so when you get under 23 construction, you don't just close the public 24 access. We have a bypass or something like that 25 through the area that will be fenced or</p>	<p style="text-align: right;">Page 115</p> <p>1 something, but that's a separate topic. So would 2 you agree with that, that we--if our goal is 3 continuity, continuous public access? This is 4 what we did in Mission Bay. This is what we do at 5 Oak to Ninth. This is what we do at other 6 developments around the Bay where we have interim 7 and temporary public access to deal with. 8 DOUG AIKINS: I take your point. I'm 9 going to suggest that Mark think about it. He's 10 the guy who agrees or not. My reaction is, once 11 again, the owner defined the project. If the 12 project is a series of phased construction 13 projects, you can't say that public access, 14 inconsistent with the project, can be mandated. 15 You can only mandate public access consistent 16 with the project. That means while there's no 17 dangerous construction going on, no big heavy 18 yellow machines, no dangerous conditions. 19 Requiring fences may or may not guarantee 20 adequate safety. If Mark says you know, I can't 21 ensure that, I can't protect myself from 22 birdwatchers walking through my D8 Cats, then at 23 that point, no, we can't agree to that, and you 24 can't impose it because it's not consistent with 25 the project.</p>
<p style="text-align: right;">Page 116</p> <p>1 Now, you can impose something that says 2 here's the final phased access plan that must be 3 completed upon completion of construction. You 4 certainly can impose that; we certainly will do 5 that. 6 BRAD MCCREA: Seems to me the project is 7 a master development. 8 DOUG AIKINS: It is. 9 BRAD MCCREA: And so, requirements 10 around that master development, the ability for 11 the public to move throughout that master plan 12 would be reasonable. 13 DOUG AIKINS: No, not if it's dangerous 14 to them or to the project. 15 BRAD MCCRAE: Well of course not. 16 DOUG AIKINS: But I mean, we can't-- 17 Brad, and we define when that is. 18 MARK SANDERS: But so I understand, you 19 all understand that I did not have a master plan. 20 My original idea was a marina and a boatyard. It 21 was called West Point Marina and Boatyard. And 22 then they said well think about anything else, 23 and so I put all the--but I don't expect that I 24 will live long enough to do all the things I 25 imagined there. So there is no master plan that</p>	<p style="text-align: right;">Page 117</p> <p>1 we can draw some lines around. 2 BRAD MCCREA: Let's get back to the 3 public access. So we'll have this interim trail 4 that will be there, and we'll have a restaurant 5 come online, something else come online, an 6 office building or something come online, right? 7 And when those come, could we have the access 8 that's adjacent along that stretch of shoreline 9 goes in? 10 MARK SANDERS: Absolutely. 11 BRAD MCCRAE: The access being the 12 boardwalk. 13 MARK SANDERS: The boardwalk, and by the 14 way-- 15 BRAD MCCRAE: And ancillary landscaping, 16 or not ancillary, but related landscaping. 17 MARK SANDERS: Associated, yeah. 18 BRAD MCCRAE: Associated. But then 19 there's this question of these big greens, and 20 then we have to sort of capture that somehow, 21 too. And so, I don't know what the like, permit 22 requirement is, the reasonable permit requirement 23 is, for capturing these large greens between 24 these development parcels. 25 DOUG AIKINS: I had a thought, and I</p>

1 don't want to bind Mark with this comment. But
 2 that is, as Erik required, asked us to tweak the
 3 language so that adjacent construction and public
 4 access is all permitted simultaneously. It's just
 5 a thought. We obligate ourselves under the permit
 6 conditions to apply for building permits for an
 7 entire phase, as defined in the permit. And that
 8 public access throughout that entire phase
 9 boundary must be completed simultaneously with
 10 the construction of everything else within that
 11 phase boundary.

12 BRAD MCCRAE: But that's what the permit
 13 says right now.

14 ERIK BUEHMANN: He's saying the phase
 15 would be different than what the phase is now.

16 JOHN BOWERS: I know. We can play around
 17 with the phases.

18 DOUG AIKINS: Well, and we're proposing
 19 to play around with the language describe it.

20 BRAD MCCRAE: Infinitely malleable.

21 MARK SANDERS: But I don't even think
 22 they know what the phases are right now.

23 MARK SANDERS: Yeah, see, here's another
 24 confusion of words. The phases--people start
 25 thinking well, phase one, and then you build

1 phase two, and the third one is phase three. This
 2 is a way to identify the three separate elements
 3 of the marina. There's the marina proper, there's
 4 a boatyard proper, and then there's a retail
 5 second. So phase one, phase two, there was not a
 6 particular order associated with it. I understand
 7 what you're saying, Brad. Please remember, I was
 8 the one that argued for the marina greens because
 9 people--small dinghy sailors want a place to dry
 10 their sails, and so I want it.

11 BRAD MCCRAE: I know.

12 MARK SANDERS: But I can't--until I--the
 13 hotel, if we ever have one--a boutique hotel; it
 14 won't be very big--and the restaurant will be the
 15 anchor. The rest will flow, because I've got lots
 16 of pressure for a yacht club; I've got a lot of
 17 pressure for a sailing [ARENA?]. I told everybody
 18 look it, we're stopped right now. But I want to
 19 do that. I'm just saying let's put language in
 20 that allows me to build it when it makes sense to
 21 build it. That's all. That's just a practical,
 22 common-sense thing.

23 BRAD MCCRAE: Yeah, so we'll figure out
 24 this concept of adjacency. I still don't--the 80-
 25 foot wide and the 100-foot wide greens, I don't

1 know how we capture those, other than to say that
 2 the green--that when development on either side
 3 of the green occurs, that the green between them
 4 comes online.

5 MARK SANDERS: What I had in mind was--

6 ADRIENNE KLEIN: [UNINTEL] in between
 7 half. You know, the one on the outside gets fully
 8 built. The one on the inside--

9 BRAD MCCRAE: And I know, Mark, in your
 10 mind, it looks more like this to you in your mind
 11 than this. These parcels don't really exist--

12 MARK SANDERS: No, actually, what I was
 13 looking for is Amendment 3, we had detailed
 14 cross-sections showing the boardwalk, which is.
 15 It goes--so let me--and so I had in my mind
 16 Crissy Field. Now, I imagine there may be a point
 17 when I come back and I say look it, I want to
 18 take these two marina greens and we'll make one
 19 giant marina green so they can play soccer, or
 20 something like that. That's in the future. But if
 21 you said as part of the retail development, we
 22 have captured so many square feet of open grassy
 23 area that won't be--we actually specified some
 24 displays from historic salt pond farms, you know,
 25 old railroad, stuff like that, for that area.

1 But we can't define it now, so all we
 2 can do is put down language that says you're
 3 going to be able to hold me up on construction of
 4 buildings to make sure I do what's practical
 5 around it, and I'm okay with that. There's a way
 6 to do that, I'm sure.

7 BRAD MCCRAE: Use of the buildings, not
 8 construction.

9 MARK SANDERS: Okay, use of the
 10 buildings, not constructed, but--

11 BRAD MCCRAE: So we'll try and craft
 12 something that works. Is that--

13 JOHN BOWERS: What if we just took phase
 14 three out of the permit? Whenever you figure out
 15 what you want to do in phase three, you come in
 16 with an amendment.

17 MARK SANDERS: The phasing thing
 18 probably doesn't make much sense anymore, to tell
 19 you the truth.

20 DOUG AIKINS: That's a big hole in the
 21 doughnut there.

22 BRAD MCCREA: Well, I mean, as a--they
 23 have entitlement to do it.

24 ADRIENNE KLEIN: Why would you give up
 25 an entitlement, yeah, that's true.

1 MARK SANDERS: I would bet you guys I'll
2 come back and ask to build half the boatyard and
3 the field dock next, and a restaurant. And so,
4 it'll be a piece of phase two and a piece of
5 phase three. And you're going to say well let's
6 talk about the public access, and we'll sit down
7 and map that out. And that's the way it should
8 be. That's the way it was up until 2006, by the
9 way.

10 On the paths, I did some more research
11 on that. I pulled the original Pacific Shores
12 paths, which specifically specifies 10-foot wide
13 paths and connecting to the similar path on West
14 Point Harbor. So it's in their permit to make
15 that connection, so that 20-foot gap we're
16 talking about, the onus is on them to do it. Now,
17 they've not done it yet because there's no reason
18 just to have a stub. But when Redwood City says
19 it's safe, I think they'll say it's safe, put up
20 the fence--

21 BRAD MCCRAE: When will--I'm just not
22 clear on that. When--why--when will Redwood City
23 say it's safe? Not when temporally, but when--
24 what has to change for Redwood City--

25 WOMAN: What are the criteria?

1 BRAD MCCRAE: So you have the ability
2 and the control to make it safe by building the
3 path.

4 MARK SANDERS: The fence--the fence will
5 make it safe, yes, and I think that Redwood City
6 would sign off.

7 BRAD MCCRAE: So presumably, if permit
8 issues, if this was executed, you could go out
9 there next week and close the gap.

10 MARK SANDERS: Yes, there's three
11 things. One is the continuation of the path,
12 which I've already--I would say two-thirds done.
13 I hadn't told you that. Second is the fence, and
14 once that's done, you can drop the gate, continue
15 the 20 feet onto their property. I believe the
16 new owners would say fine and they would release
17 me to do it, but right now I have a formal letter
18 of the city you're forbidden. So I think the
19 Redwood City people would say once the fence is
20 there, you can open it. Once Redwood City does
21 that, I believe Pacific Shores will say it's okay
22 to open it, and they may or may not build the
23 path themselves. Now their paths are asphalt;
24 mine are DG, so there will be a little question
25 about that.

1 MARK SANDERS: Well, that's what Kevin
2 Stevens worked so hard on. Kevin Parker is the
3 Redwood City planning director now. He worked
4 with Kevin [STEVENS?] for months. We made
5 drawings. We said here is where we would put the
6 fence to protect the pathway. People can stay on
7 the path.

8 BRAD MCCRAE: Who needs to construct
9 that 20 feet, though?

10 MARK SANDERS: Oh, it's on their
11 property.

12 BRAD MCCRAE: I know. Who constructs it?

13 MARK SANDERS: It's not--Shore.

14 DOUG AIKINS: It's got to be them.

15 MARK SANDERS: It's got to be done, but
16 it's not a big deal.

17 BRAD MCCRAE: Well you say it has to be
18 them, and Mark, you said it has to be done. But
19 are you saying Pacific Shores is responsible for
20 constructing the 20 feet?

21 MARK SANDERS: No, they have ownership
22 of it. I actually--now this goes back to Jay Paul
23 days, when I had to pay for the access. I told
24 them if necessary, I would build that 20 feet,
25 because I wanted it there.

1 BRAD MCCRAE: Okay, so the path isn't
2 open today because the city says they can't allow
3 it to be open until it's safe. The path isn't
4 open today because you haven't built it, and
5 you're fully expecting to build it, was what I'm
6 hearing. You're saying they could--

7 MARK SANDERS: They being?

8 BRAD MCCRAE: They being Pacific Shores.

9 MARK SANDERS: Oh, Pacific Shores
10 Center.

11 BRAD MCCRAE: But you--I'm trying to get
12 clear, are you obligated to build it in any way?

13 MARK SANDERS: I'm not obligated, but I
14 mean, I would certainly not leave a stub there,
15 unless they would forbid me from building it. But
16 then you have the right to say Pacific Shores
17 Center, build it. It's in their permit.

18 I have a formal easement, which I've
19 paid for, to allow me to connect to their path.
20 Now, who builds the path is a second--to me,
21 that's a secondary issue.

22 BRAD MCCRAE: Because it seems like if
23 you decided you didn't want to build the path,
24 and we didn't require you to build that stub,
25 then this could stay closed forever, no?

<p style="text-align: right;">Page 126</p> <p>1 DOUG AIKINS: Brad, no, you have 2 separate independent authority over Pacific 3 Shores. 4 BRAD MCCRAE: Did we require them to 5 build this stub? 6 ADRIENNE KLEIN: Both permits require 7 the connection to be made. 8 BRAD MCCRAE: Then why the heck hasn't 9 Pacific Shores built the 20 feet yet? 10 MARK SANDERS: Safety. 11 WOMAN: Sounds like it's on-- 12 DOUG AIKINS: It leads right into a big 13 swampland. 14 MARK SANDERS: Right now, up until 15 recently-- 16 BRAD MCCRAE: It's their requirement, 17 though. 18 ADRIENNE KLEIN: Or not, if it's under 19 Mark's easement area. 20 MARK SANDERS: Their biggest issue 21 there, it was down that--where it crosses over-- 22 BRAD MCCRAE: I've stood there several 23 times. 24 MARK SANDERS: Yeah, but you don't 25 remember when it was--originally, it was about</p>	<p style="text-align: right;">Page 127</p> <p>1 this wide and it would flood at high tide. I've 2 had to build that up. I mean, I want the bay 3 trail. 4 BRAD MCCRAE: I remember back when we 5 walked the site before it was ever dug out. 6 MAUREEN SANDERS: I want to get closure 7 on this issue. I think we all do. I just want to 8 note we're running out of time. Are there other 9 important things besides getting closure on this? 10 BRAD MCCREA: Only the poor permittee 11 that's not getting his staff report written by 12 Erik. 13 ERIK BUEHMANN: Yeah, so I think we 14 have, like, some understandings about kind of 15 where we're headed and what we're going to do, 16 and so maybe we just go that way. 17 MARK SANDERS: The rest of the small 18 issues, the swimming, the live-aboard location, 19 all of those sort of subjects, you're okay with 20 the language on that? 21 ERIK BUEHMANN: I mean, you know, there 22 are some changes we--so this is a point I would-- 23 wanted to make was that you made changes in here, 24 and I want to make clear that they're not going 25 to remain the way you've written them and that</p>
<p style="text-align: right;">Page 128</p> <p>1 we're going to rewrite some things, okay? 2 MARK SANDERS: Are there some that stick 3 out? There's only, like, six areas, so... 4 ERIK BUEHMANN: You know, it's-- 5 MAUREEN SANDERS: Could the two of you 6 talk by phone and confer so that all, you know, 7 12 of us aren't here again for another two-hour 8 meeting? 9 ERIK BUEHMANN: Yeah, I mean, that's 10 possible. What I was thinking is that, you know, 11 you change the language a little bit and then 12 send it to us, and then maybe we'll respond with 13 our version, I guess. 14 DOUG AIKINS: Sure. 15 ERIK BUEHMANN: I don't know. 16 DOUG AIKINS: That could be a very 17 hierarchy [UNINTEL]. 18 ERIK BUEHMANN: Yeah, I know. 19 DOUG AIKINS: No, but our perspective is 20 to get this wrapped up as soon as possible. 21 ERIK BUEHMANN: Yeah. 22 DOUG AIKINS: So if it's a two-day 23 turnaround on exchange of tweaks, let's get that 24 done. 25 ERIK BUEHMANN: Okay.</p>	<p style="text-align: right;">Page 129</p> <p>1 MARK SANDERS: One of the things, Erik, 2 that always--the language in the permit says if 3 any part of this permit is illegal or 4 unenforceable, even one part, the whole permit is 5 invalid. And so that's why I've been pretty 6 sticklish about--it says at the end, it says if 7 any part of this permit is illegal or 8 unenforceable-- 9 ERIK BUEHMANN: I thought it said the 10 opposite. 11 MARK SANDERS: No. Normally--normal 12 contracts say if some part's invalid, the rest 13 still holds. Yours is the opposite of any 14 contract I've ever seen, but it does say that. So 15 that's why it's important to actually catch these 16 little mistakes. 17 ERIK BUEHMANN: Yeah, so we--I can write 18 out a list, maybe, and when you're working on 19 that, I could do that. 20 MARK SANDERS: Great. 21 ERIK BUEHMANN: And we can kind of 22 justify why we're not changing some things and 23 why we are changing-- 24 DOUG AIKINS: That would be terrific. 25 ERIK BUEHMANN: I can do that.</p>

1 MARK SANDERS: So last thing, Erik. So
2 the guest dock we have--we think we understand
3 the difference between courtesy and transient. We
4 can sort that one out. You understand the need to
5 make the requirements for construction of the
6 paths consistent with the construction some way.
7 There's language for that. The rest of this stuff
8 is mostly nickel, dime stuff.

9 The last thing, though, is I do not--
10 you said there's a process. I wrote 18 letters
11 two years ago, and none of them have been
12 answered. I've answered every allegation, the
13 what you call the silly ones, and the ones that I
14 think are without merit. So we asked last time,
15 please tell us if any allegation still has merit
16 in your mind, because if it does, to me, the
17 whole--we're trying to dispose of allegations--

18 MAUREEN SANDERS: And go forward.

19 MARK SANDERS: --and go forward. And
20 part of that is to fix the permit, but the
21 allegations, I--it kills me to think that I
22 haven't been doing the best I can.

23 ADRIENNE KLEIN: We were addressing all
24 of the responses to the letters that you were
25 sending us in the fall of 2011 were all being

1 addressed through the meetings that Ellen and I
2 were having with Kevin and his staff, Truman, and
3 many of them were being incorporated into the
4 permit amendment.

5 MARK SANDERS: And I was saying--

6 ADRIENNE KLEIN: And worked on
7 separately through the preparation [UNINTEL] of
8 the plans.

9 MARK SANDERS: Most were fixed by the
10 meeting--

11 ERIK BUEHMANN: Repeat your question. Is
12 your question--

13 MARK SANDERS: Yeah, because if we're
14 not clearing the amendments, you guys, I think we
15 go to the next--

16 ADRIENNE KLEIN: You mean the
17 allegations.

18 MARK SANDERS: The allegations, then we
19 go to the commission.

20 BRAD MCCRAE: You wrote those letters to
21 Tom, and of course Tom's no longer with BCDC. I
22 mean, Tom went on sick leave, and then he decided
23 to retire.

24 MARK SANDERS: So nobody--they're just
25 on his desk someplace?

1 BRAD MCCRAE: No, so our responsibility
2 is to get back to you.

3 MAUREEN SANDERS: Thank you.

4 ADRIENNE KLEIN: And we have addressed
5 those, and we did address that at the last
6 meeting. Also, at the end of the last meeting.

7 MARK SANDERS: No, you said we would
8 call a separate meeting is what you said,
9 Adrienne, and we didn't.

10 ADRIENNE KLEIN: But we generally
11 addressed that the public access that we've been
12 talking about, the connection that Brad just--
13 that we just talked about, the public access in
14 the Phase 1B, with signs--

15 MARK SANDERS: Yes, but you--

16 ADRIENNE KLEIN: So plan approval for
17 the as-built public access, signs indicating
18 that--

19 MARK SANDERS: But what the last letter
20 said, you--

21 ADRIENNE KLEIN: And we recognize that
22 there's a fence linked to providing that.

23 MARK SANDERS: This current request,
24 though--

25 ADRIENNE KLEIN: [UNINTEL]

1 MARK SANDERS: [UNINTEL] the last letter
2 said that even it--he said we don't think it's
3 true that Redwood City forbids you to open this
4 up, but even if it's true that you are not
5 allowed to do it, or the allegation was false,
6 you're still liable for the fines. What? So with
7 language like that, unless you can tell me here's
8 an allegation that we think sticks--

9 ADRIENNE KLEIN: I don't believe any of
10 our allegations are false from the May 4th--

11 MARK SANDERS: Well the issue of the
12 restroom signs--

13 DOUG AIKINS: So now, in light of the
14 new permit language.

15 ADRIENNE KLEIN: Corrected is different.

16 DOUG AIKINS: That's what we want to
17 know. We want to know which has merit now, in
18 view of this amended language.

19 ADRIENNE KLEIN: Once it's signed--

20 DOUG AIKINS: Well once we've tweaked
21 it, get it, you know--

22 ADRIENNE KLEIN: Yeah.

23 DOUG AIKINS: You've heard the concepts
24 expressed today. With this, plus the concepts--

25 BRAD MCCREA: John [UNINTEL].

1 JOHN BOWERS: The validity of these
2 allegations that were made back in 2011 are
3 measured against the permit as it existed at that
4 time, not against the permit as we are changing
5 it now.

6 DOUG AIKINS: May I amend that just a
7 little bit? It's not just the permit, because the
8 permit was erroneous in many respects. It's the
9 permit as it should have been at that time.

10 JOHN BOWERS: It's the permit as it was
11 written.

12 DOUG AIKINS: So, John--

13 JOHN BOWERS: That is the basis for
14 determining whether somebody is vulnerable or
15 susceptible to--

16 DOUG AIKINS: No.

17 JOHN BOWERS: Yes, that's what--

18 DOUG AIKINS: Not if we show you a
19 clerical error, a transcription error,
20 misinterpretation, misapplication that you agree
21 with. If you say you know what, we made a
22 mistake, the permit said X, but it really meant
23 Y, and so therefore, the allegation is not
24 meritorious.

25 JOHN BOWERS: If the error was of that

1 character, I mean--

2 DOUG AIKINS: You have the ability to
3 make that determination.

4 JOHN BOWERS: That's where what I was
5 referring to as prosecutorial discretion

6 MARK SANDERS: But we've found, we've
7 identified 44 significant errors and conflicts,
8 which we've corrected--44 of them. That's not
9 insignificant, some of them are major. But when
10 you say every allegation has merit, allegations
11 like there were no restroom signs. You were
12 trying to get into the laundry room. The restroom
13 signs were there from day one. The allegation
14 that sprinklers are getting water on the paths
15 when it's windy. How can that be a valid
16 allegation?

17 JOHN BOWERS: We can respond.

18 ADRIENNE KLEIN: Yeah.

19 MARK SANDERS: So you don't--

20 JOHN BOWERS: We can tell you which
21 allegations--we can do that.

22 DOUG FURMAN: Can you also put together
23 the amount fined you're looking for to date? At
24 the same time, you could identify a dollar amount
25 that you think are associated with each of these

1 infractions?

2 ADRIENNE KLEIN: Yes.

3 MARK SANDERS: Well, okay, I--Doug?

4 DOUG FURMAN: Yes.

5 MARK SANDERS: Can we have two minutes,
6 please?

7 DOUG FURMAN: Sure.

8 ERIK BUEHMANN: I have to take off, so--

9 ADRIENNE KLEIN: Thank you, Erik.

10 ERIK BUEHMANN: Okay.

11 ADRIENNE KLEIN: You can go ahead. No,
12 I'm not going to go, but if you want to, please
13 do.

14 ERICK BUEHMANN: So we're going to need
15 to [UNINTEL], okay, so you're going to have a bit
16 of back-and-forth.

17 ADRIENNE KLEIN: And next time, don't
18 dress again like--

19 ERICK BUEHMANN: Yeah, I know, we're in
20 uniform.

21 ADRIENNE KLEIN: Yeah, it's the legal
22 uniform, khakis and a blue shirt.

23 MARK SANDERS: We have been praised by
24 Coastal Commission as the only Northern
25 California marina with universal pump-out. We're

1 named one of the 12 best and the most stylish
2 marinas in the world this year.

3 BRAD MCCRAE: That's great.

4 MARK SANDERS: I had to tell them we're
5 being fined for it.

6 MAUREEN SANDERS: Oh, Mark.

7 BRAD MCCRAE: No one doubts that from
8 30,000 feet, as Doug started this conversation,
9 that this is a marina that is modern and provides
10 access to the bay. It provides access along the
11 shore, and it's when you get to the ground that
12 you realize you come across fences and signs that
13 say trespassing.

14 DOUG AIKINS: It's not finished.

15 BRAD MCCRAE: What's that?

16 DOUG AIKINS: It's not finished.

17 MARK SANDERS: And the trespassing signs
18 that were Cargill signs, not my signs.

19 DOUG AIKINS: Well on that point,
20 perfect segue, I've been instructed to add
21 urgency to this, and so I want to work
22 cooperatively with you, Erik, and with everybody
23 else to do a high RPM turnover of tweaks. I'll
24 give you mind right away, I appreciate yours
25 right away. We'll cycle them back and forth until

everybody likes them. We'll circulate them among this group and make, you know, buy off on the permit substantive language that will set the stage open right away for your catalogue of past allegations, your price tag per allegation, and we can start to sift through. When we get that list, we'll go through our history and see what we can reconstruct as to whether we think it was meritorious, and we'll have another dialogue about that. The injunction, if put urgency on that, is just as strong as the injunction to put urgency on the permit language. We'd like to wrap them up simultaneously.

BRAD MCCREA: Are those linked, or are those running independent of each other?

DOUG AIKINS: I think they're linked.

ERIK BUEHMANN: Even if we get all the permit language tweaks worked out, you won't execute the permit until--

MARK SANDERS: We need to have this either concluded or go to the commission, or worse, by this month.

MAUREEN SANDERS: We need to move forward.

ERIK BUEHMANN: So that was going to be

my question, because I feel like we keep going around in a circle on this.

MARK SANDERS: Yeah, we can't.

ERIK BUEHMANN: And I did a lot of work at the last minute, and I'm sorry that it wasn't up to snuff. But if we're going to do this again, our process was, and what we described to you was that you would sign the permit, and then we would do [UNINTEL] and kind of repair. And what you're saying now, what it sounds like you're saying is you want to do them simultaneously. Maybe we get the permits set up--

DOUG AIKINS: Parallel, you bet.

ERIK BUEHMANN: --and then we just have it sit there while we deal with this other thing, unsigned.

DOUG AIKINS: Not for long. It may rest there momentarily, but--

JOHN BOWERS: Yeah, but if we come to a place where your sense of meritorious violations and our sense of meritorious violations don't jive, it sounds like then you will not sign the permit.

MARK SANDERS: Then we, I think, have to go to the commission.

DOUG AIKINS: Yeah, let them solve the issues. If they're that big an issue--

JOHN BOWERS: I mean, I'll just make the point that you're fully aware of, because you know what our law says. If you don't sign the permit, then we are into a different kind of enforcement context, in which your vulnerability to civil fines becomes much higher. Because if we issue a cease and desist order, there are very significant fines associated with being in violation of that cease and desist order.

DOUG AIKINS: We want to move this so quickly that you're not tempted.

JOHN BOWERS: We think of it as not only in our interest, but it is also in your interest to get things into a situation in which there are no grounds for any kind of injunctive cease and desist order, regardless of whether we can reach agreement on what may have or may not have happened in the past. Do I make my point?

DOUG AIKINS: I apologize for interrupting, because I was trying to reflect back that I understand that loud and clear. We want to move so quickly that you're not even tempted.

JOHN BOWERS: Well, okay, and we will accept the burden of explaining to you why we think there are some valid enforcement issues related to past conduct.

DOUG AIKINS: Understood.

JOHN BOWERS: We will take on that responsibility, and we will listen to anything that you want to say to us in response to that.

DOUG AIKINS: Terrific.

JOHN BOWERS: And we will be happy to have that dialogue with you. But to tie these things two together, such that we are not going to sign the permit unless you completely exonerate us for all liability for something that may have happened in the past--

DOUG AIKINS: That may be an overstatement.

MARK SANDERS: No, we're just saying answer two-year-old letters, or answer the request that we made the last time.

JOHN BOWERS: Okay.

MARK SANDERS: We can prove a significant number of the allegations were fabricated. We can absolutely prove that. So I am looking forward to the opportunity to show that.

1 JOHN BOWERS: We are willing to engage
2 you in that dialogue. We may not--at the end of
3 that process, we still may not be in complete
4 agreement. But regardless of how that particular
5 aspect of what we're talking about emerges, I
6 think it is clearly in our best interest to get
7 this permit into a condition where everybody
8 knows going forward that you are no longer in
9 violation of the--

10 DOUG AIKINS: We totally agree.

11 ADRIENNE KLEIN: And that the
12 commission, should it go that way, can be shown
13 photographs of posted public [UNINTEL] signs with
14 physical access at the site, because that's
15 really the impetus for this enforcement action.

16 MARK SANDERS: Understood.

17 JOHN BOWERS: That's all the stuff. When
18 Mark signs this permit, that's going to set the
19 60-day period of time in motion, right, and
20 that's when you're good for building your fences
21 and putting up signs and all that--

22 MARK SANDERS: Once the permit's signed,
23 I can go, that's for sure.

24 JOHN BOWERS: But let me just ask you
25 one more thing, Mark. I recall there being a

1 concern about inclement weather related to some
2 of this stuff. You've got to get this stuff
3 accomplished before the rainy season. Is that a
4 fair--

5 MARK SANDERS: Absolutely; if it's a
6 marsh out there, you can't put a fence in that--

7 JOHN BOWERS: Because if we get into the
8 rainy season, then--

9 MARK SANDERS: We're dead, yeah.

10 JOHN BOWERS: --all bets are off, right?

11 MARK SANDERS: Well, I've got, as I told
12 Brad, I have been building the paths not all the
13 way, but just up to, because I know we're running
14 out of time. By the way, one--you sent a letter,
15 Brad. Do you want to talk about the recording?

16 ADRIENNE KLEIN: I don't think so.

17 MARK SANDERS: Okay. Anyway, the
18 conclusion of the meeting was you would send a
19 draft for me to review. That's what the final
20 statement at the recorded--our last meeting. You
21 would send a draft for my review.

22 ERIK BUEHMANN: A draft of?

23 MARK SANDERS: The amendment of five.
24 Instead--

25 ERIK BUEHMANN: Did we not do that?

1 MARK SANDERS: You sent us a signed one
2 that I had 10 days to sign, not a draft to
3 review.

4 ADRIENNE KLEIN: Oh yeah, permit.

5 MARK SANDERS: And on top of that, in
6 two locations, Erik specifically said so you are
7 saying you will not sign this if it includes this
8 and this and this, and I said yes, and I
9 explained why--two times. So the letter that was
10 sent, which says you agreed to sign it, that is
11 completely incorrect. And that we--you promised
12 to sign it.

13 No, in fact you guys said we will send
14 you a draft to review, and then you look it over
15 and get it back to us. That's what the conclusion
16 of the meeting was, and I'll send you the
17 recording, Brad. So you can imagine our shock
18 when we saw that letter.

19 MAUREEN SANDERS: Yeah, I had the
20 onerous task of reviewing the two-and-a-half hour
21 recording, and at least twice in the recording,
22 if not three times, Erik says things like--I've
23 got notes, but I mean, he says things like to be
24 clear on your position, Mark, you're saying that
25 if the permit includes an item that says public

1 access must be provided to adopt, you will not
2 sign. And in two instances, possibly three--the
3 third is open to interpretation--he says that's
4 correct. And yet, that's the permit we got to
5 sign.

6 JOHN BOWERS: Well, and that's why the
7 letter had an alternative mechanism, namely
8 applying for an amendment to the permit that
9 would allow the permit to be signed, but take
10 that issue out of the framework of--

11 MAUREEN SANDERS: But, John, why put it
12 in to begin with if it was known that that would
13 lead to non-signature of the permit and just--

14 JOHN BOWERS: No, no, the idea was--

15 MAUREEN SANDERS --mean that we would go
16 through another process that's another two, three
17 months long of trying to amend what was there
18 that was unacceptable to begin with? It just
19 never stops.

20 JOHN BOWERS: Very simply--

21 MARK SANDERS: And you did say you'd
22 send us a draft for review, and instead, you
23 didn't do that.

24 MAUREEN SANDERS: Well, but we're at a
25 good point now. We've got good language, we've

1 got agreement, we've got time frames that work,
2 don't you think?

3 BRAD MCCREA: Yes.

4 DOUG AIKINS: And I think will close the
5 gap between our draft permit and the draft that
6 everybody likes very quickly. I don't see these
7 issues that we raised today as problematic in the
8 substantive terms.

9 By the way, on this urgency thing, our
10 intent is that Mark keeps moving on. You know,
11 people want to move to the marina. People want to
12 get businesses going there.

13 BRAD MCCREA: Thanks for your help.

14 DOUG: You, too.
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